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JOINT COMMITTEE ON CORPORATIONS AND SECURITIES

Reference: Financial Services Reform Bill

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SYDNEY

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JOINT COMMITTEE ON CORPORATIONS AND SECURITIES

Monday, 24 July 2000Monday, 24 July 2000

Members: Senator Chapman *(Chair)*, Senators Conroy, Cooney, Gibson and Murray and Ms Bishop, Mr Cameron, Mr Rudd, Mr Sercombe and Dr Southcott

Senators and members in attendance: Mr Cameron and Senators Chapman, Cooney and Gibson

Terms of reference for the inquiry:

Financial Services Reform Bill.

WITNESSES

Committee met at 10.05 a.m.

FRENCH, Mr Phillip, Senior Policy Manager, Investment and Financial Services Association Ltd

RALPH, Ms Lynn, Chief Executive Officer, Investment and Financial Services Association Ltd

CHAIRMAN—I declare open this public hearing of the parliamentary Joint Committee on Corporations and Securities and welcome the witnesses who will be appearing before the committee today. The purpose of the hearings is to take evidence on the committee's inquiry into the draft Financial Services Reform Bill. This is the second hearing on this inquiry, and the committee will hold a further public hearing in Melbourne tomorrow.

THE COMMITTEE HAS RECEIVED AND PUBLISHED 61 WRITTEN SUBMISSIONS, WHICH IT WILL CONSIDER ALONG WITH THE EVIDENCE IT RECEIVES DURING ITS PUBLIC HEARINGS AND IN PREPARING ITS REPORT. THE COMMITTEE PREFERS TO CONDUCT ITS HEARINGS IN PUBLIC. HOWEVER, IF THERE ARE ANY MATTERS THAT A WITNESS WISHES TO DISCUSS WITH THE COMMITTEE IN CAMERA, WE WILL CONSIDER SUCH A REQUEST. I WOULD ALSO LIKE TO REMIND WITNESSES THAT THE GIVING OF FALSE OR MISLEADING EVIDENCE MIGHT CONSTITUTE A CONTEMPT OF THE PARLIAMENT. I WELCOME REPRESENTATIVES FROM THE INVESTMENT AND FINANCIAL SERVICES ASSOCIATION LTD. DO YOU WISH TO MAKE AN OPENING PRESENTATION TO THE COMMITTEE?

Ms Ralph—I will just make a couple of brief remarks.

CHAIRMAN—Please proceed with that, then we will go to questions.

Ms Ralph—Thank you for the opportunity to speak to you today. This bill represents the third leg of reforms coming out of the Wallis inquiry, the financial services inquiry. In a lot of ways they represent the most significant reforms, because they do go to the heart of the interaction between the financial services sector and its customers. We see that if the bill is implemented there will be some significant positive impacts on the cost structures associated with both licensing and disclosure of financial services. We believe—and you will see this from our submission—that there are very significant savings to be had. That is why recently in a survey IFSA members rated the FSRB as highly positive for improving global competitiveness of their businesses.

WHILST WE APPLAUD THE EXTENSIVE CONSULTATION THAT HAS GONE ON IN RELATION TO THIS BILL—IF WE THINK IT STARTED BACK WITH THE FSI, THERE HAVE SUBSEQUENTLY BEEN TWO DISCUSSION PAPERS PUT OUT BY TREASURY AS WELL AS AN OPPORTUNITY FOR EVERYONE TO COMMENT ON THE BILL ITSELF, SO WE DO APPLAUD THE EXTENSIVE CONSULTATION ON THIS THAT HAS GONE ON—WE BELIEVE IT IS NOW TIME TO GET A MOVE ON, BECAUSE THE SAVINGS ARE OUT THERE WAITING FOR US, AND THOSE ARE SAVINGS WHICH CAN TO A LARGE EXTENT BE PASSED ON TO CONSUMERS.

OUR SUBMISSION, I HAVE TO ADMIT, IS QUITE A LENGTHY ONE—NOT BECAUSE WE THINK THERE IS A LOT WRONG WITH THE BILL BUT BECAUSE IT IS A SUBSTANTIVE AND COMPLEX BILL AND WE FELT IT APPROPRIATE TO MAKE

EXTENSIVE COMMENTS ON THAT. THERE ARE PROBABLY A HANDFUL OF WHAT WE THINK ARE AREAS WHERE THE BILL PROBABLY DOES NOT GO FAR ENOUGH IN TERMS OF BEING ABLE TO ACHIEVE EVEN FURTHER ECONOMIES AND EFFICIENCIES, AND WE OUTLINED THOSE IN OUR COVERING LETTER TO YOU. THEY GO TO THE AREAS OF REFINING SOME OF THE LICENSING PROVISIONS AND SOME OF THE DISCLOSURE PROVISIONS. THEN AT THE END OF OUR SUBMISSION WE JUST HIGHLIGHT THAT—SIMILARLY TO WHAT WORKED QUITE EFFECTIVELY UNDER THE MANAGED INVESTMENTS ACT—WE BELIEVE THE REGULATOR SHOULD BE GIVEN SOME REASONABLY BROAD POWERS TO ENSURE SMOOTH AND EFFECTIVE IMPLEMENTATION OF SUCH A COMPREHENSIVE REFORM. WE ARE PREPARED TO TAKE YOUR QUESTIONS.

CHAIRMAN—I note that your submission says the bill misses a number of opportunities for substantial cost savings. Could you outline where you see those missed opportunities for cost savings and how the bill should be changed to take account of them, if that is possible?

Ms Ralph—I would be happy to. On the licensing side, the bill notes that holders of a financial services licence do not need to actually give their employees a proper authority. That is a terrific administrative saving and initiative of the bill. But what the bill fails to realise is that most large financial services organisations these days exist within quite a large group structure, and employees are often employed by a service company within that group structure and not necessarily by the company that holds the licence. So we have made some recommendations about the fact that if those provisions could be extended to cover employees within a group structure we think there would be a lot of economies there.

IN THE AREA OF LICENSING, WE BELIEVE THAT THERE IS OPPORTUNITY TO REDUCE SOME DUPLICATION BY ALLOWING SOME RECOGNITION OF LICENSING THAT MAY HAVE BEEN GONE THROUGH BY APRA. FOR EXAMPLE, APRA APPROVES TRUSTEES AND ENTITIES AND DOES BASICALLY LOOK AT AN ORGANISATION THAT WOULD BE SIMILAR UNDER THE LICENSING PROVISIONS OF THIS BILL. I GUESS WE ARE SAYING THAT THERE SHOULD BE SOME OPPORTUNITY TO RECOGNISE THAT IF YOU HAVE A LICENCE UNDER APRA AS AN APPROVED TRUSTEE, BY AND LARGE YOU PROBABLY MEET MOST OF THE REQUIREMENTS FOR A LICENCE UNDER THIS BILL. WE ALSO THINK THAT IN TERMS OF TRANSITING TO THIS BILL, OBVIOUSLY THERE ARE NUMEROUS ENTITIES IN THE MARKET CURRENTLY HOLDING LICENCES. OUR MEMBERS IN PARTICULAR HAVE RECENTLY, OVER THE LAST TWO YEARS, GONE THROUGH RELICENSING UNDER THE MANAGED INVESTMENTS ACT. WE WOULD CERTAINLY LIKE TO SEE TRANSITION PROVISIONS THAT GAVE ASIC SOME BROAD ADMINISTRATIVE POWERS TO RECOGNISE THOSE ENTITIES WHO ARE CURRENTLY LICENSED IN THE MARKETPLACE.

ON THE ISSUE OF DISCLOSURE, WE THINK THERE ARE A COUPLE OF OPPORTUNITIES AGAIN TO ENHANCE THE SAVINGS THAT ALREADY EXIST THERE. THE FIRST IS IN THE AREA OF LODGMENT. THE BILL REQUIRES THE LODGMENT OF PRODUCT DISCLOSURE STATEMENTS FOR SUPERANNUATION, LIFE INSURANCE AND MANAGED INVESTMENTS. WE BELIEVE THAT AT THIS POINT LODGMENT IS OF NO VALUE TO CONSUMERS. CURRENTLY, LIFE INSURANCE AND SUPERANNUATION DOCUMENTS ARE NOT LODGED. WE CANNOT SEE WHY THEY SHOULD BE SINGLED OUT IN THE FUTURE FOR LODGMENT, AS OPPOSED TO ANY OTHER PRODUCT DISCLOSURE STATEMENT. WE ALSO WORRY ABOUT THE MORAL HAZARD THAT LODGMENT WITH THE REGULATOR CAN POSSIBLY CREATE IN TERMS OF PEOPLE BELIEVING THERE HAS BEEN SOME SORT OF AUTHORISATION OR APPROVAL PROCESS DONE BY

THE REGULATOR, WHICH WE KNOW THE REGULATOR HAS NOT DONE. THE INDUSTRY, OF COURSE, IS HAPPY TO MAINTAIN RECORDS FOR SIGNIFICANT PERIODS OF TIME TO ENSURE THAT IF CONSUMERS EVER NEED TO ACCESS THOSE DOCUMENTS THAT THEY ARE THERE. WE JUST THINK THE LODGMENT PROCESS IS UNNECESSARY.

WHILST WE APPLAUD THE DIRECTED DISCLOSURE REGIME THAT IS IN THE BILL, WE THINK THE BILL DOES NOT PROVIDE ANY DUE DILIGENCE DEFENCES. WE THINK THAT MOST LIKELY ORGANISATIONS SUCH AS OUR MEMBERS WILL GO THROUGH A VERIFICATION TYPE OF PROCESS, SIMILAR TO A DUE DILIGENCE PROCESS THAT THEY ARE CURRENTLY DOING ON PROSPECTUSES. BECAUSE WE BELIEVE THEY WILL DO THAT, WE BELIEVE IT IS APPROPRIATE THAT A DUE DILIGENCE DEFENCE SHOULD BE PUT INTO THE BILL. WE THINK THAT WILL HAVE TWO OUTCOMES. FIRSTLY, PEOPLE WILL FEEL MUCH MORE COMFORTABLE MOVING TO THIS DIRECTED REGIME WITH THOSE DEFENCES IN PLACE, SIMILAR TO THE DEFENCES THEY HAVE TODAY. SECONDLY, I THINK THAT WILL LEAD TO THE MUCH SMALLER, SHORTER, SHARPER, MORE CONCISE DOCUMENTS THAT THE BILL ACTUALLY INTENDS TO ACHIEVE. WITHOUT THAT DISCLOSURE, ISSUERS OF THESE DOCUMENTS WILL BE TEMPTED TO THROW THE KITCHEN SINK IN AND WE WILL BE BACK WITH VERY LONG DOCUMENTS YET AGAIN. THOSE ARE THE SORTS OF EXAMPLES OF AMENDMENTS THAT WE BELIEVE COULD BE MADE TO THE BILL WHICH WOULD PROVIDE ADDITIONAL EFFICIENCIES, BOTH FOR THE INDUSTRY AND FOR CONSUMERS.

CHAIRMAN—I note that on page 14 of your submission you express concern about the possibility of a different disclosure regime for superannuation. I suspect others might argue that because of the scope of regulatory oversight that now governs superannuation, a different disclosure regime is probably justified. Would you care to comment on that alternative argument?

Ms Ralph—Because our members are involved in all sorts of financial services products, including superannuation, we try to take a holistic view of these things. One of the main benefits of the bill is that it does bring a common disclosure regime to a whole range of products. If you can imagine right now, we sell products under CSN, under the Life Act and also under managed investments. Very similar products end up with quite different regimes. We do not believe that has helped consumer understanding of financial services products when they get different looking documents for what are quite similar products. So we think one of the benefits of the bills—not only for us in terms of having to produce documents but for consumers in terms of them becoming equipped and used to seeing similar sorts of documents for financial services products—is that it really hits the nail on the head when it goes to a single regime.

WHAT WE WOULD BE VERY DISTRESSED TO SEE, WHETHER IN THE BILL OR SUBSEQUENTLY IN REGULATIONS OR IN POLICY BY THE REGULATOR, THE CREATION OF SILOS AGAIN FOR VARIOUS FINANCIAL SERVICES PRODUCTS BECAUSE OF THEIR SLIGHTLY DIFFERENT NATURE. AT THE END OF THE DAY, FOR THE LARGE EXTENT, SUPERANNUATION IS AN INVESTMENT MARKET RELATED PRODUCT. IT HAS ITS SPECIAL TAX TREATMENT—THAT MAKES IT SPECIAL—AND IT HAS SOME SPECIAL PRESERVATION ASPECTS TO IT. BUT, OTHER THAN THAT, AS AN INVESTMENT PRODUCT, IT IS VERY SIMILAR TO ANY OTHER INVESTMENT PRODUCT. WE WOULD CERTAINLY LIKE TO SEE OUR MEMBERS BE ABLE TO ISSUE OFFER DOCUMENTS THAT INCLUDE A FULL RANGE OF PRODUCTS, SO THAT A PERSON CONSIDERING THEIR FULL

FINANCIAL NEEDS COULD ACTUALLY SEE THE FULL RANGE OF INVESTMENT, LIFE INSURANCE AND CASH STYLE PRODUCTS WITHIN A SINGLE DOCUMENT. IN THAT WAY, THEY COULD CONSIDER THEIR FINANCIAL POSITION HOLISTICALLY, RATHER THAN HAVING TO BE GIVEN SEPARATE DOCUMENTS THAT LOOK DIFFERENT FOR DIFFERENT TYPES OF PRODUCTS. WE THINK THAT EFFECTIVELY GOES TO DEFEAT THE PURPOSE OF THIS BILL, AND IT CERTAINLY WOULD GO TO DEFEAT THE MAIN OPPORTUNITIES FOR SOME SAVINGS.

CHAIRMAN—One of the issues that has been raised with us by other witnesses is the definition of advice. I note in your submission you argue that the distinction between providing factual information and providing advice must be kept intact. Treasury argue that the bill does that, but the witnesses we have had are very concerned and are arguing that that is not necessarily the case, that there is a problem with the definition of advice in the legislation. Could we have your view on that issue?

Ms Ralph—First of all, we should be cognisant of the fact that under the Corporations Law, which covers securities and futures only, there has always been a grey area about where advice starts and stops and where basic information begins. The industry has managed to live with that distinction. We appreciate the fact that this licensing regime effectively now moves into a much broader area of the industry and covers a much wider range of services. Organisations that have not lived with that grey area in the past are expressing some concern. We think that, within the bill, there probably still is some grey area. Again, that is why we have reached our conclusion. We think it is probably impossible within legislation to really draw the line, certainly in the Corporations Law. Working with ASIC over a number of years to try to clarify that grey area, we found it incredibly difficult to describe every sort of situation in the marketplace that you could possibly catch and, therefore, in strict words—in one line—draw where the line is.

WE THINK IT IS APPROPRIATE THAT THAT SORT OF DISTINCTION BE LEFT TO, EFFECTIVELY, THE POLICY DEVELOPMENT AREA. IN THE PAST, ON THE CORPORATIONS LAW SIDE, WE HAVE MANAGED TO WORK EFFECTIVELY WITH ASIC TO DETERMINE WHERE THAT LINE IS. SHOULD THIS BILL COME IN, WE THINK THAT IT IS APPROPRIATE THAT ASIC BE GIVEN, AS I MENTIONED BEFORE, SOME REASONABLY BROAD POWERS ON THE LICENSING SIDE IN ORDER TO DEVELOP POLICY AND WORK WITH THE MARKET TO DEVELOP WHERE THOSE DISTINCTIONS ARE. IT IS, OF COURSE, A VERY IMPORTANT DISTINCTION BECAUSE THE DIFFERENCE BETWEEN GIVING ADVICE—AND THEREFORE HAVING TO MEET ALL OF THE STANDARDS OF COMPETENCY TRAINING AND SUPERVISION, WHICH OBVIOUSLY INVOLVES ENORMOUS COST—AND THE PROVISION OF STRAIGHT INFORMATION IS AN IMPORTANT ONE FOR US ALL TO GET CORRECT.

Mr French—Our members are concerned with the use of the phrase 'interpretation of information'. They see that, by bringing in that phrase, it clouds things even further. What exactly does the phrase 'interpretation of information' catch? That could catch just the provision of factual information. Again, as Lynn says, ASIC can develop policy in relation to all of these areas if given adequate powers.

CHAIRMAN—Do you think it is appropriate to leave something as important as that to the regulator rather than having it properly defined in the first place in the legislation?

Mr French—It would be nice to have it properly defined, if it can be done at such an early stage. Maybe it is something that could be done in regulations later on. But it would be better not to have something that is rigid in the primary legislation early on, such as that phrase.

Ms Ralph—Our view is that the variety of styles of business out there in the marketplace now makes it very difficult to draw a clear line that will be clear to everybody out there. That is why we believe the solution is probably sitting in regs or in policy. The markets will change from time to time as well and the structures of businesses will change.

DURING THE GOOD ADVICE REVIEW THIS ISSUE WAS RAISED—THIS WHOLE NOTION OF WHERE DOES ADVICE START AND STOP. HAVING SPENT A NUMBER OF MONTHS AND NUMBERS OF SUBMISSIONS ON IT, NO OBVIOUS SOLUTION CAME TO THE FOREFRONT. AT THIS POINT I DO NOT THINK WE HAVE ANY PARTICULAR WORDS THAT WE THINK COULD SOLVE THE PROBLEM ABSOLUTELY BLACK AND WHITE.

CHAIRMAN—Your submission also puts your view that the long-term cost impact of the bill is positive. Has it been possible to do any assessment of what cost savings might be achieved in compliance costs for your members?

Ms Ralph—The figures we have presented in the submission go to those areas where we believe the bill had not gone far enough and we tried to put some cost figures on there. We have not tried to make an assessment of the overall cost savings of the bill. Obviously it is reasonably difficult to do that exercise. Therefore we just picked isolated instances where we thought the bill could go further. We attempted to demonstrate that we thought there were significant dollars in each of those initiatives.

Senator GIBSON—Lynn, as you know, this committee is basically running in parallel with the government's final review of the draft bill. The five key areas that you have raised this morning you have undoubtedly raised and pushed with Treasury. Have they been responsive to you in regard to each of those issues?

Ms Ralph—Obviously we have not been told what is in the final bill—

Senator GIBSON—Nor have we.

Ms Ralph—We feel pretty confident that Treasury know and understand our points of view. That obviously is the important thing. We feel pretty confident. These are issues that we have been raising for some time. When the bill came out these were issues that we raised with them both in writing and face to face. I think it is fair to say that we feel confident that a case has been made and that they have heard our arguments. Whether they accept them or not remains to be seen.

Senator GIBSON—The key issues you have raised—for instance, licensing for group structures, avoiding duplication, APRA and the Managed Investments Act, the disclosure stuff, due diligence and then ASIC to oversee the final implementation—I would have thought were important issues that should have been taken into account before we got this far.

Ms Ralph—We certainly appreciate that it is a massive undertaking to rewrite all of this. It has been done thoughtfully but there is a lot of detail there. Again, that is why our submission is quite lengthy because there is a lot of depth and detail there. We never really expected in a first draft that everything would be there. That is why we appreciated the opportunity to comment on the draft bill itself. Subsequent to that—I believe that Treasury has had numerous submissions—they have been beavering away trying to take account of all of those comments. We had some limited discussions with Treasury subsequent to us giving the submission so they understood which issues were important to us.

WE WERE NOT SURPRISED THEY DID NOT DOT EVERY 'I' AND CROSS EVERY 'T'. IT WAS A MASSIVE UNDERTAKING—NOT A BILL THAT THEY COULD GO AND COPY FROM SOMEWHERE ELSE AROUND THE WORLD. IT IS LEADING EDGE. IT IS WORLD CLASS STUFF AND WE THINK THEY GOT 90 PER CENT OF IT THERE. AT THE FRONT OF OUR SUBMISSION, ON PAGES 6 AND 7, WE OUTLINE EACH OF THE FSI RECOMMENDATIONS AND HOW THEY MANAGED TO PICK THOSE UP IN THE BILL. IF YOU THINK THAT IS THEIR REPORT CARD, IT WAS A PRETTY GOOD REPORT CARD.

Senator GIBSON—I understand that. Thank you for making the additional points this morning.

Mr ROSS CAMERON—You mentioned that during the implementation of the FSR regime there was enormous challenge to the ASIC and it highlighted the importance of having a regulator sufficiently resourced and equipped to implement the essential administrative policies. Do you think that ASIC needs a substantial injection of funds, resources or expertise?

Ms Ralph—It is hard for us on the outside of ASIC to make that judgment. All we can say is that we know that for the implementation of the Managed Investments Act—which, whilst it was substantial, was in fact a much smaller exercise than this will be in terms of implementation—it was very useful that ASIC had a dedicated team that was really focusing on that and that they also had sufficient powers to flexibly implement through transition to actually make it work. That has effectively got us through the two-year transition period, whilst there was a of hard work and effort put in through that period, pretty painlessly. We would just like to see those lessons learned. We think that was a good exercise that worked well and worked well for the participants in the marketplace. We think it is a combination of resourcing and flexible powers that the regulator needs to do that. Only the regulator can say whether they think they have enough resources. On the outside, it is hard to make that judgment.

Mr ROSS CAMERON—You talked about the importance of the availability of due diligence as a defence, in part to avoid the potential moral hazard of investors assuming a level of whatever it is, whether it be probity or prudential assurance, that may not in fact be there. Obviously the best long-term guarantee of consumer or investor protection is a well educated, critical thinking, informed investor community. How do you think the bill goes? I think governments always run the risk of wanting to appear to remove risk from commercial relationships for political reasons. How do you think the bill goes in striking the balance between protections for investors and the risk of creating moral hazard?

Ms Ralph—I will just make a quick clarification. When I was talking about moral hazard, I was talking about the lodgment of product disclosure statements, not the due diligence defences.

Our experience since the bill came out by and large has been that many of the consumer groups are quite supportive of the bill. I guess that is a good indication that the bill has the balance right. For the most part, for the sorts of products that our members sell, whether it is the licensing and/or disclosure side, we feel that there has probably been no diminution of consumer protections at all, if in fact it has gone the other way. The directed disclosure regime I guess we have been in favour of because we think it will produce documents that are simpler, sharper, more to the point and more focused and actually give consumers more of an opportunity to develop a familiarity with this type of document and with the questions to ask when they look at a document like this. So in that regard we have always thought that that was a positive step forward.

I THINK FROM OUR POINT OF VIEW WE FEEL AS IF WE ARE PRETTY WELL SUBJECT TO THE SAME REQUIREMENTS THAT WE HAVE BEEN IN THE PAST IN TERMS OF CONSUMER PROTECTIONS. WHAT IT HAS DONE IS THAT, WHETHER YOU ARE A FINANCIAL ADVISER, WHILE YOU ARE IN THE MIDDLE OF A CONVERSATION WITH A CLIENT YOU DO NOT HAVE TO STOP AND KEEP CHANGING REGULATORY HATS WHEN YOU START TO TALK ABOUT DIFFERENT PRODUCTS, OR, IF YOU ARE AN ISSUER OF PRODUCTS, YOU DO NOT HAVE TO FOLLOW DIFFERENT REGIMES FOR DIFFERENT PRODUCTS THAT ARE EFFECTIVELY DOING THE SAME THING. WHAT THEY HAVE DONE IS THAT THEY HAVE PICKED UP A LOT OF EFFICIENCIES BY MOVING TO THOSE SINGLE REGIMES WITHOUT REALLY DIMINISHING CONSUMER PROTECTIONS IN THE PROCESS.

Mr French—We have conducted quite a few workshops with consumer groups from around the country. It is probably fair to say that the protection they see as most coming out of this legislation is the provision for consumers of coherent and comparable documents. That is the best protection for them—where they can look at functionally similar products in brief and concise documents. So many consumers have such a battle with boredom, apathy—whatever you like—in wading through really long documents which are produced mainly to satisfy the dictates of the legal advisers to the people who produce them.

Ms Ralph—One issue we have had raised with us by consumer groups is the provisions for cold calling in the bill. You may have had some submissions on those. We made a subsequent submission to the Treasury on that. After discussions with consumer groups, we agreed with them that it is not so much cold calling which is the mischief; it is pressure selling which is the mischief. Getting an unsolicited envelope in your mailbox is highly unlikely to influence you to buy something that is inappropriate for you. But having someone knock on your door face to face can lead to pressure selling. So we have made a subsequent submission to Treasury to say that, whilst we do not think cold calling in and of itself is the problem—that is, unsolicited mail or email or whatever—we think there should be some prohibition on face-to-face cold calling. We believe that is where the greatest opportunity for pressure selling lies. Having said that, we think very little of it actually goes on any more, but we will certainly be happy to see that restricted in the legislation.

Mr ROSS CAMERON—You would not have door-to-door sales of life insurance products?

Ms Ralph—That is right. No, we would not.

Mr ROSS CAMERON—What about phone companies? Do you object to Optus or One.Tel selling their products door to door?

Ms Ralph—We are not qualified to say. I could speak as a consumer out there but as an association, all we are really qualified to talk about is our own industry.

Mr ROSS CAMERON—So if the common law says a person is entitled to walk up to someone else's front door and state their business—that they have an implied permission to do that and then that permission can either be extended or withdrawn—you would see consumers as needing greater protection than that?

Ms Ralph—Yes. If this bill did not provide some restriction on face to face, IFSA would be most likely to issue a standard for its own members restricting it anyway.

Mr ROSS CAMERON—I sometimes get worried that the more we seek to clothe the consumer or investor in cottonwool protection against any of the hazards associated with commercial risk, you can diminish the reflex to critically analyse every commercial decision.

Ms Ralph—We are still supportive of cold calling in relation to mail, email, and telephone—all of those. But we think that in our industry in the past and in other industries the one place which does leave a huge potential for abuse is face-to-face cold calling. At the end of the day our industry is more than happy to believe that it can sell more than sufficient products without using that technique.

Senator COONEY—In your discussion with Mr Cameron you were talking about the lawyer's advice in relation to the lengthy documents. You say that the legal advice is to have many clauses in your contracts. Is that what you are saying and do you follow that advice?

Ms Ralph—Currently, under the Corporations Law, as you know, the section says you must include everything that someone might reasonably expect to be there. Because that can be interpreted quite broadly over time, that has led to more and more inclusion of information. The directed disclosure regime that is in this bill that effectively outlines 10 or 11 key things you need to put, we think will go by and large a long way to giving the issuers confidence to stick to those 11 points. We have mentioned in our submission that we think some incorporation by reference provisions would be useful as well. Both incorporation by reference and due diligence, together with the directed disclosure regime, will give issuers the confidence to produce quite short and sharp documents. Without those two additional elements, we run the risk of opening up the bigger and longer documents again.

Senator COONEY—There is some created tension, let us hope, between protecting yourselves in the sense of having all that you have to have in there according to the law and, at the same time, keeping the documents in a state that enables a consumer to see what is going on. There is a bit of a struggle between those two points.

Ms Ralph—I think there has been, and that is why we feel that the directed disclosure regime in this bill actually gives some guidance, which has been absent in the past, to sort of reduce that tension. That is why we have been supportive of that style of regime.

Senator COONEY—In your very comprehensive submission, with regard to issue 8.1 it says:

IFSA does not consider that consumer credit insurance should be regulated by Part 7.8 of the Bill.

And that is it. Is there any reason for that or is that just your assessment on the totality of all the material you have had available to you? What I am getting at is: you have developed everything else so comprehensively but that just sits out on its own. I am just wondering whether there is any particular reason why you have got that in there.

Ms Ralph—First of all, our members do not really cover consumer credit, and that is probably why we do not have a lot to say about it. Secondly, I think we basically support the idea that that regime, which has been established for consumer credit, has had a lot of time, energy and effort put into it, and we can understand why, at this point in time, they would hold that out.

Senator COONEY—So that is really just saying, 'Yes, we agree with the situation.' You say to replace clause 188B with the one you have got in here. The one in the bill is quite a simple clause and you have extended this one a little.

Mr French—What page are we at?

Senator COONEY—I am on page 33 of your submission. You have gone to some trouble to draft an alternative section. Obviously, you attach some importance to it because you have gone and actually drafted something. Do you see it as something special or just as a means of trying to help the legislation to be drafted correctly?

Ms Ralph—Yes, the latter. In numerous places we have put some provisions as suggestions. Hopefully, the Treasury might find those helpful, or you might find those helpful, particularly where there are provisions where I feel we have something to add and where we have some focus. In this particular issue I think we do feel that there is an issue that probably needs some refinement in relation to how liable the licensee actually is for the unauthorised conduct of their proper authority. In an instance where the proper authority has clearly told the client that they are authorised to deal only in certain products and then proceeds to sell the customer something completely different, we feel that if those disclosures have been clearly made the licensee should not be liable for the actions of that unauthorised conduct. Clearly, if the authorised representative does not make those disclosures and does not make it clear to the client what they are and what they are not authorised to sell to them, then of course the licensee would be liable for that conduct of the agent. But where the agent has actually clearly said, 'These are the products I sell under my licence and, by the way, would you like to talk about something else?' we think that it is inappropriate to make the licensee liable for that conduct as well.

Senator COONEY—It is a good way of making your concepts clear if you actually draft the section because it appears before you as the way you want it. I think that is quite a good way of doing it.

Mr French—It is an important issue of that balance that Mr Cameron referred to, where you do not have a situation where in all situations a consumer can just say, 'They are responsible. I

did not listen. I was not there. I do not want to know. They are responsible.' So it is not purely a strict liability regime. It is just trying to get that balance that you were referring to. So on the important aspects we do try to get our member companies to come up with a rationale and a draft provision, as Lynn says, to try to assist Treasury, just to see what it would look like. It is up to them whether they reject it.

Senator COONEY—It is very expressive in lots of ways.

Mr ROSS CAMERON—In what proportion of transactions across your members do you think the purchaser or customer or investor would get independent legal advice?

Ms Ralph—Legal advice?

Mr ROSS CAMERON—Yes.

Ms Ralph—I expect hardly any. In the stats that I have seen—and they are not necessarily IFSA stats—that ask consumers where they go to get advice regarding financial services transactions, lawyers actually rank reasonably low on the list.

Mr ROSS CAMERON—It is mainly accountants, is it?

Ms Ralph—It is accountants, financial advisers, stockbrokers, friends on the list—those sorts of things.

Mr ROSS CAMERON—Among the transaction costs among your member companies, how big a bill is legal advice to the provider companies?

Ms Ralph—Does anybody want to make a guess? I would have to take that on notice. I would have to get a few companies' profit and loss statements and have a look at the costs of legal. And then, of course, you would have to separate out how much of that relates to compliance per se as opposed to commercial legal advice. Most of our big members would have quite major teams of in-house lawyers working on these sorts of things.

Mr ROSS CAMERON—In terms of satisfying the Corporations Law requirements about what a reasonable investor would expect to find, do you think the bill will reduce your reliance on legal advice?

Mr French—I think the Corporations Law changes that came in during 1991—that is, section 10(22), the section you just referred to in particular—have had a major positive benefit for the industry as a whole as well as for consumers in that they have led to this culture of compliance and due diligence in the preparation of information for consumers. Because of the legal advice it has gone too far. It has gone to the point where we have a kitchen sink in everywhere for fear of being able to be hung, drawn and quartered because of some minor omission.

THAT CULTURE IS NOT GOING TO GO AWAY, NOR SHOULD IT, BECAUSE RESPONSIBLE ISSUERS WILL CONTINUE TO UNDERTAKE A VERIFICATION

PROCESS WITH THE PRODUCTION OF DOCUMENTS. IT IS JUST THAT THIS BILL GIVES US THE POTENTIAL TO BRING THAT UNDER CONTROL AND MORE CLOSELY DEFINE, IN THE LIGHT OF THE LAST DECADE'S EXPERIENCE, WHAT SHOULD BE IN THERE WITHOUT PRESCRIBING IT SO THAT YOU END UP WITH THESE VERY LONG DETAILED DOCUMENTS SUCH AS YOU GET FOR SUPERANNUATION, WHERE THE REGULATORS AND THE LEGISLATORS HAVE PRESCRIBED HOW YOU DO EVERYTHING. SO IT WILL MAKE IT A MORE RATIONAL REGIME, BUT THE VERIFICATION PROCESS WILL STILL BE THERE AND THE NEED FOR LEGAL ADVICE WILL STILL BE THERE. I WOULD NOT SEE THE NEED FOR LEGAL ADVICE BEING SIGNIFICANTLY AFFECTED, AND DURING THE TRANSITION THE LEGAL INDUSTRY PROBABLY IS GOING TO BOOM.

Mr ROSS CAMERON—But you are saying you have a fair bit of boiler plate stuff in your documents at the moment where the firms just did not hit the button and spew out the page after page after page of boiler plate that they were expected to put in there according to the case in the South Australian Court of Appeal eight years ago or whenever it was.

Ms Ralph—It is really hard to judge. I think what you will find is that it is not that there will be less reliance on legal advice. Whilst the regime provides more clarity than, say, the current Corporations Law, it is still open, and there is still a provision that says 'and anything else that you think you really need to put in there', so people are still going to rely heavily on legal advice. People, as Phillip said, will still undertake due diligence processes whether we call them that or not. They will still undertake those sorts of internal processes.

WHAT WE ARE TALKING ABOUT IS STREAMLINING REGIMES. WE ARE TALKING ABOUT POSSIBLY A SINGLE DOCUMENT COVERING WHOLE RANGES OF PRODUCTS. WE ARE TALKING ABOUT NOT HAVING TO ACTUALLY MONITOR THREE COMPLETELY DIFFERENT COMPLIANCE PROCESSES BUT ONE. SO I THINK THERE ARE DEFINITELY EFFICIENCIES IN THERE. DOES THAT MEAN YOU ARE LESS RELIANT ON YOUR LAWYER TO MAKE SURE THAT YOU ARE DOING THE RIGHT THING? PROBABLY NOT, AT THE END OF THE DAY. BUT I THINK IT IS SIMPLER AND THAT THE NUMBER OF PROCESSES THAT YOU HAVE IS REDUCED AND THEY ARE MADE MORE EFFICIENT.

Senator COONEY—This is one area where strong ethical conduct is pragmatic, because if the industry has a reputation that it runs things correctly a lot of these problems drop away.

Ms Ralph—That is why to a certain extent we have asked for that due diligence defence to be put back in there, because we know our members are actually going through that process anyway and will continue to do so before they issue documents.

Senator GIBSON—Just taking up Ross's point, the fact that we are moving to a unified regime, as opposed to a multiple one, in the end should lead to this industry spending less on legal advice. It should be simpler in the long run when it settles down than what it is at present.

Ms Ralph—I think so, but what we do not want to say is that people will not need a lawyer anymore.

Mr French—It could be; it is interesting actually. I have a lot to do with members of the legal profession in the industry, and it is amazing with the compartmentalisation of advice. You have superannuation lawyers. You have insurance lawyers. You have managed investment

lawyers. Quite often it is very much a silo thing. That is starting to change already. In five years time, you will not have a superannuation lawyer; you have a financial services lawyer.

Senator GIBSON—Sure.

CHAIRMAN—I do not whether you saw the reference to Stan Wallis's comments in the financial press over the weekend, that there had been too much focus on corporate governance at the expense of entrepreneurship and wealth creation: I am wondering whether you would like to react to those comments and, perhaps in the light of the CLERP generally, whether we are getting it right and whether it has any relevance to this legislation in particular.

Ms Ralph—We welcome Mr Wallis's comments. We think they are very timely and very pertinent. Over the last 10 years, IFSA and its predecessor, AIMER, have spent a lot of time and energy on promoting shareholders' rights. We think that was probably the right thing to do over the last decade because some time around the 1970s or 1980s some of those rights got a little bit out of kilter. We have appeared before this committee on numerous occasions talking about ensuring that shareholders' rights and their ability to exercise those rights are enshrined in law or in ASX listing laws or wherever, so that as a package the balance between the separation of ownership and control remains—that is, that the shareholders still have the ability as owners to exercise those rights. We really feel that, at this point in time in Australia, we have gone a long way down that pathway quite positively towards doing that.

THE REASON I SAY MR WALLIS'S COMMENTS ARE TIMELY IS THAT, GIVEN THAT WE DO NOW HAVE IN LAW AND IN LISTING RULES SOME QUITE SOME STRONG PROTECTIONS FOR SHAREHOLDERS, IT IS PROBABLY NOT A BAD TIME TO SIT BACK AND SAY, 'OKAY, IF WE LOOK AT ALL OF THOSE LAWS AND LISTING RULES AS WELL AS, FOR EXAMPLE, THE IFSA GUIDE TO CORPORATE GOVERNANCE AND THE GUIDELINES THAT ARE SET OUT THERE, ARE THEY NOW PRODUCING THE RESULTS?' MR WALLIS'S CHALLENGE ABOUT WHETHER OR NOT ALL THOSE RULES ARE ADDING UP TO BOTTOM LINE PERFORMANCE IS THE RIGHT QUESTION TO BE ASKING FOR THE NEXT 10 YEARS.

WE CERTAINLY ARE PREPARED, AND WE HAVE ALREADY SPOKEN WITH OUR COLLEAGUES AT THE INSTITUTE OF COMPANY DIRECTORS, THE SHAREHOLDERS ASSOCIATION AND THE BUSINESS COUNCIL ABOUT SITTING DOWN AND ACTUALLY NOW STARTING TO DEBATE AND FLESH OUT SOME OF THE IDEAS WHICH MR WALLIS HAS RAISED. IN DOING SO—AND IF WE WERE TO, FOR EXAMPLE, DO A REVIEW OF OUR BLUE BOOK, OUR GUIDELINES OF CORPORATE GOVERNANCE—WE WOULD ALWAYS BE COGNISANT THAT, WHATEVER NEW MODELS WE MIGHT MOVE TO, WE WOULD STILL LIKE TO ENSURE THAT THOSE SHAREHOLDER RIGHTS ARE THERE AND ENSHRINED, THAT THERE ARE MECHANISMS FOR SHAREHOLDERS TO USE THOSE RIGHTS AND THAT THE BALANCE BETWEEN SHAREHOLDERS AND BOARDS OF MANAGEMENT ENSURES THAT THE WEALTH IS PROPERLY DISTRIBUTED WHEN IT IS CREATED. SO WE ARE NOT NECESSARILY ATTACHED TO THE MODEL AS WE HAVE IT—IT IS NOT WRITTEN IN SOME SORT OF TABLET SOMEWHERE—BUT WE ARE CONSCIOUS THAT A LOT OF THOSE GUIDELINES AND RULES WERE PUT IN PLACE TO ENSURE THAT WHERE THERE WERE AREAS OF CONFLICT OF INTEREST, OR WHATEVER, THERE WERE SOME CHECKS AND BALANCES THERE.

IF WE ARE TO MOVE TO SOME NEW MODELS—AND MR WALLIS'S PAPER SUGGESTS SOME POSSIBLE NEW MODELS—THEN WE JUST WANT TO SIT DOWN AND TALK ABOUT WHERE WILL THE CHECKS AND BALANCES BE WITHIN THOSE NEW MODELS. WE ARE NOT OBJECTING TO MOVING TO NEW THINGS OR QUESTIONING WHETHER WE HAVE IT RIGHT OR WRONG. WE ARE HAPPY TO PARTICIPATE IN THAT PROCESS, AS LONG AS ALONG THE WAY WE CAN BE CONVINCED THAT RIGHTS ARE NOT BEING DETRIMENTALLY AFFECTED AND THAT THE CHECKS AND BALANCES IN PLACE ARE STILL THERE. IT WILL BE A VERY INTERESTING NEXT 10 YEARS, BECAUSE SOME OF THE QUESTIONS MR WALLIS HAS ASKED ARE VERY DIFFICULT. I DO NOT THINK WE ALL HAVE THE ANSWERS TODAY. I DO NOT THINK HE PURPORTS TO. WE CERTAINLY DO NOT YET, BUT WE ARE CERTAINLY WILLING TO SIT DOWN AND START TO TALK ABOUT THOSE.

CHAIRMAN—Is CLERP—and this bill in particular—facilitating the wealth creation process, though, or are we going to need a new round of CLERP to go down the path that Mr Wallis is suggesting?

Ms Ralph—That is a hard one. Can I come back to you on that one at some later date?

Senator COONEY—Much later.

Ms Ralph—We feel pretty confident that this bill provides a lot of efficiencies. It is pretty leading edge stuff worldwide. Our members, as I said, in a recent survey all rated positive its impact on global competitiveness. It maintains the integrity of the industry in terms of consumers having confidence that the right people are in the industry and when they are interacting with them that disclosure is protecting them. We think that as a package that that is a pretty good outcome.

Mr ROSS CAMERON—Mr Chairman, without wanting to drag this on too long, I think your question is a very important one. What would be the smallest market capitalisation of a member of your organisation?

Ms Ralph—Do you mean the smallest amount of money they would manage, or their actual market—

Mr ROSS CAMERON—No, their worth as an entity.

Ms Ralph—A lot of my members are unlisted, and they are quite small and privately held. Their actual worth as a business could be quite small.

Mr ROSS CAMERON—Somebody put to me the proposition of the incredibly onerous obligations put on pharmaceutical companies in order to list a drug, which saw them expending often a billion dollars to get a drug to market; that actually this suited the major pharmaceutical companies because it acted as a powerful barrier to market entry for anybody else who was thinking about it. Sometimes I get concerned that while creating this kind of Rolls Royce compliance regime means consumers can know they are getting high levels of protection it can also punish consumers by limiting choice, by discouraging innovation, by discriminating against the newer players. Do you have a view about that?

Ms Ralph—Last week at IFSA's annual conference Les Owen, the new chief executive of Axa Asia Pacific, gave an address in which he outlined his vision for financial services over the next 20 years. If he is correct, what is going to be driving competition in the marketplace is the ability of a financial service provider to either manufacture themselves or distribute product of other people to a wide range of consumers—product from not just here in Australia but all over the world—as consumers get more savvy about their investments, and to deliver that with high service levels, requiring high technology. The barriers to entry are not regulatory in this industry any longer, really. The barriers are capital, ability to be global, or have global alliances, and the ability to produce very large IT systems. These, and not the regulatory regime, are now the barriers to entry in this industry.

I HAVE TO SAY THAT IN THIS BILL THERE ARE SIGNIFICANT CARVE-OUTS FOR PEOPLE OPERATING IN THE WHOLESALE MARKETPLACE. PRIMARILY, THEY ARE VERY, VERY SMALL MEMBER COMPANIES, ARE BOUTIQUE INVESTMENT MANAGERS WHO ARE MANAGING WHOLESALE INVESTMENTS AND BASICALLY FALL INTO THE CARVE-OUTS PROVIDED TO THEM IN THIS BILL—AND SO THEY SHOULD. SO THEY ARE SUBJECT TO A MUCH DIFFERENT SORT OF REGIME THAN PEOPLE ACTUALLY DEALING WITH RETAIL CONSUMERS, AND I THINK THAT IS PROBABLY APPROPRIATE. WE HAVE MADE SOME COMMENTS IN OUR SUBMISSION ABOUT ENSURING THAT THE LIST OF PEOPLE CAUGHT BY THE WHOLESALE CARVE-OUT IS APPROPRIATE. BUT, YES, I THINK THE BARRIERS TO ENTRY ARE NOT REALLY THE REGULATORY ONES HERE.

Mr French—I think there is a general view in the industry now that the barriers to entry are the lowest they have ever been across the board. In fact, some of the things that used to provide a barrier are now a burden, such as huge infrastructure, in the form of buildings for example, and that cost structures have to change because barriers to entry have come down. In a regulatory sense, you can buy most of it in now. If you are a starter, you can buy it in on a consulting basis.

CHAIRMAN—Ms Ralph, Mr French, thank you very much for your appearance before the committee today and for your answers to our questions.

[10.57 a.m.]

GRATION, Mr Chris, Senior Adviser, Policy and Public Affairs, Credit Union Services Corporation (Australia) Ltd

LAWLER, Mr Luke, Senior Adviser, Policy and Public Affairs, Credit Union Services Corporation (Australia) Ltd

CHAIRMAN—I welcome the representatives of the Credit Union Services Corporation (Australia) Ltd. We have before us your submission, which we have numbered 11. Do you wish to make an opening statement, after which we will proceed to questions?

Mr Lawler—Thank you for giving us the opportunity to say our piece. Credit Union Services Corporation, known as CUSCAL, is the peak industry body for Australia's credit unions. Credit unions are authorised deposit-taking institutions, licensed and supervised by the Australian Prudential Regulation Authority. Generally speaking, credit unions and CUSCAL strongly support the reforms to regulatory arrangements arising from the financial system inquiry. Credit unions, as member owned financial institutions, support effective measures to protect consumers. Credit unions have a long history of educating members about financial matters and providing excellent personal service. We support the government's goal of ensuring similar products are subject to consistent regulation.

THE PROBLEM WE HAVE WITH THE DRAFT FINANCIAL SERVICES REFORM BILL IS WHERE IT WOULD IMPOSE ONEROUS DISCLOSURE AND CONDUCT REQUIREMENTS—REQUIREMENTS WHICH ARE REQUIRED FOR RISKY INVESTMENT PRODUCTS—ON SIMPLE, WELL-UNDERSTOOD, CORE BANKING PRODUCTS. DEPOSITS AND PAYMENT FACILITIES ARE SIMPLE, SAFE, WELL-UNDERSTOOD AND EXTREMELY LOW RISK. SUPPLIES OF THESE PRODUCTS ARE ALREADY SUBJECT TO A LICENSING REGIME, AND WILL CONTINUE TO BE SUBJECT TO THAT LICENSING REGIME WHILE BEING REQUIRED TO COMPLY WITH AN ENTIRELY NEW LICENSING REGIME AIMED AT PROTECTING CONSUMERS FROM RISKY INVESTMENT PRODUCTS.

ESSENTIALLY, THE PROBLEMS THAT WE HAVE WITH THE BILL ARISE FROM THE INCREASED DISCLOSURE REQUIREMENTS AND FROM THE NEW REQUIREMENTS AND DEFINITIONS SURROUNDING THE CONCEPTS OF GENERAL AND PERSONAL ADVICE. THE IMPACT OF THE LEGISLATION, AS IT CURRENTLY STANDS IN DRAFT FORM, WOULD BE A SIGNIFICANT NEW COMPLIANCE BURDEN ON CREDIT UNIONS INVOLVING INCREASED COSTS FOR STAFF TRAINING AND BUSINESS SYSTEMS. CREDIT UNIONS ARE OWNED BY THEIR MEMBERS, AND THOSE COSTS WOULD BE BORNE BY CREDIT UNION MEMBERS.

WE ARE ALSO CONCERNED THAT THE BILL COULD HAVE A NEGATIVE EFFECT ON THE PROVISION OF FINANCIAL SERVICES IN THE BUSH THROUGH AGENTS AND THE RURAL TRANSACTION CENTRES. THIS PROBLEM FLOWS FROM THE INCLUSION OF DEPOSIT AND PAYMENT FACILITIES IN THE REGIME. IT ARISES DUE TO THE REQUIREMENTS RELATING TO AUTHORISED REPRESENTATIVES. OUR INITIAL POSITION IN THE CLERP 6 POLICY DEBATE HAS BEEN TO REMOVE DEPOSITS AND PAYMENT FACILITIES FROM THE REGIME BECAUSE

CONSUMERS ARE ALREADY WELL PROTECTED IN RELATION TO THOSE PRODUCTS. IF THE GOVERNMENT CANNOT BE PERSUADED TO REMOVE DEPOSITS, WE HAVE PROPOSED A NUMBER OF AMENDMENTS IN THE SUBMISSION WHICH WE BELIEVE WILL SIGNIFICANTLY IMPROVE THE LEGISLATION. WE HAVE SUGGESTED A NUMBER OF OTHER AMENDMENTS WHICH WE BELIEVE WILL CLARIFY THE BILL OR FIX UP UNINTENDED CONSEQUENCES.

CHAIRMAN—In relation to the taking of deposits, could you clarify for me whether the requirement under this legislation for you to be supervised will be loaded on top of the role of the Australian Prudential Regulation Authority?

Mr Lawler—If you are an authorised deposit taking institution you are able to take deposits from the public without issuing a prospectus. To do that you have to be closely supervised and meet a wide range of prudential standards.

CHAIRMAN—Under APRA?

Mr Lawler—That is the prudential regime that all authorised deposit taking institutions must meet. What is proposed in this bill is a new regime, which is essentially designed for, or aimed at, riskier market-linked products. An authorised deposit taking institution would have to have two licences from two different entities in order to run the same sort of business. I should make it quite clear that where a credit union or any other authorised deposit taker is in the business of providing market-linked deposits we absolutely accept that they should be subject to the FSR bill regime.

CHAIRMAN—I understand that. I just wanted to clarify the fact that when you come under the regime of this legislation you are not absolved from being under APRA.

Mr Lawler—Absolutely not.

CHAIRMAN—In fact, you have dual responsibilities, whereas at the moment you only have a single responsibility.

Mr Gration—The bill takes it further than the original Wallis inquiry, which suggested that in applying a single licensing regime ASIC might exercise its powers such that prudentially regulated products were not subject to the regime. That was the original recommendation of the Wallis inquiry. The bill goes a lot further than that. Hence you are getting a very different response from those parts of the financial services industry that deal in market-linked investments, insurance products, for which the bill provides a considerable rationalisation of existing arrangements. For those parts of the industry involved in core banking the bill represents the imposition of a whole new raft of regulation on top of existing regulation—in a market where the government authority is already trying to reduce risk to virtually nothing.

CHAIRMAN—I quote to you what the representative of the Association of Permanent Building Societies said at our hearing in Canberra last Monday:

I think it is a bit of a blur as to what constitutes personal advice. A situation where, for example, a customer comes up to a teller or to the counter staff saying, 'I need the following things' and the teller says, 'I do have a product that suits.' All

the teller does is take out a brochure and say, 'These things seem to be covered here and this is probably what you need.' Would that be personal advice? I think it would be.

Have you got a view on this issue of definitions and what will constitute personal advice and what will not under the bill? What are your concerns?

Mr Lawler—You still have three stages. You have information, advice and personal advice. Deciding where one ends and the other one starts is difficult. We have taken the view that we would prefer to see deposits and payment facilities outside this regime. If they are to remain inside the regime we think the bill needs to be changed to make it a bit more workable in deciding where the boundaries are between information and personal advice. We have put in an attachment to our submission three scenarios which take you through the process of a simple engagement between a customer and a teller with something like a term deposit. Depending on what the exchange is you have quite different, and increasingly more onerous, disclosure and conduct requirements imposed by the bill as it stands now. We think there are some amendments you could make to the bill which would certainly make the distinctions between those various stages clearer.

CHAIRMAN—I do not know whether you were here when IFSA presented all of their evidence, but Lynn Ralph suggested that this issue might be better dealt with by leaving it to ASIC to determine, in negotiation with various sectors of the industry, rather than it being clarified in the legislation. I am wondering what your view is on that—whether you would prefer it to be clarified in the legislation or leave it to the regulator.

Mr Lawler—Do you mean the distinction between these?

CHAIRMAN—Yes.

Mr Lawler—In the first instance it would be preferable from our point of view for some of the proposals we have suggested to be taken on board.

CHAIRMAN—In the legislation?

Mr Lawler—Yes.

Mr Gration—We think that this draft bill is an improvement on the original proposed definitions, and indeed I think has responded, in part, to some of the suggestions we made. But for ASIC to be effective in the use of its powers under the legislation, the head definitions need to work correctly. Currently, because of the way the definition of 'personal advice' has been drawn from the Corporations Law, it imposes a fairly high test. It is an objective test at the moment—or could be read to be an objective test—not a subjective test, and it has a reference to what a customer might expect to be provided. That makes the training and compliance burden for our front office staff very difficult. While we would expect ASIC to be issuing policy statements that clarify this further—you cannot do that in an act and you cannot do it fully in regulation—the head definitions need to be clean and at the moment we think they can still be improved.

CHAIRMAN—Again, the building societies raised the issue of tellers and counter staff having to be trained up to the level expected by ASIC's interim policy statement 146. They raised the concern in relation to counter staff and tellers but even more so in relation to agencies—pharmacy staff, newsagent staff and so on. I note that you have also raised that issue. Could you outline your concerns in relation to the possible detrimental impact that requirement might have on the provision of services in rural and regional areas.

Mr Lawler—The problem posed by the bill is that there are a number of requirements on authorised representatives of licensees, and also on the licensee in relation to the authorised representatives. Where you have a situation where someone whose business is being a newsagent or a pharmacist or whatever in a country town, that is what they do, but they also take deposits and do some basic, simple banking business. The community is going to either have that facility or not, depending on whether that agent is able to do it. With this bill there will be some extra reporting requirements imposed on the authorised representative. You could have a situation where the authorised representative will have to present financial services guides and various new documentation requirements. They will have to report back to ASIC who their staff are. In our view, it imposes a slightly unrealistic regime, given the nature of that business. The question then arises: how will that affect the likelihood of those sorts of operations continuing, if there is a burden that creates a situation where people feel it is too much bother, given the economics of those businesses?

Senator GIBSON—With regard to deposit taking by your organisations—the building societies, rural transaction centres, et cetera, agencies or non-agency—you would prefer, if the deposit taking organisations such as yours are authorised under APRA, which you are now, that that in fact be 'carved out'?

Mr Lawler—Deposits, not the organisations.

Senator GIBSON—No, the deposit taking.

Mr Lawler—And payment facilities.

Senator GIBSON—Can that be readily defined?

Mr Lawler—You could change the definition of 'financial product' to take deposits out.

Mr Gration—There are fairly clear legal definitions of what a deposit is in several hundred years of banking law. That is one of our points, that it is not just that deposits are incredibly low risk—that is, the institution bears all the risk in a deposit, and we have a system of prudential regulation designed to minimise that risk—but that the products themselves are very simple, very straightforward and well understood by consumers. In that circumstance, it seems to us to be possible to subject the industry, as such, to licensing but then to use an exemption power and use the definitions to carve out issuing, dealing, et cetera, in deposit and payment services.

Senator COONEY—Page 35 of 48 follows on from what has been discussed here. In the amendment that you suggest there to 761G(6) you talk about financial services to people, and you say that you will not have an ability for a class of people to be prescribed by regulations, I think, to give some flexibility or, if not that, for ASIC to be able to do it. Wouldn't it be better to

have it in the act? Why do you want it as flexible as that when the regulation can be made or ASIC can do it? I suppose it means that you do not have any supervision by the parliament in this particular area. Do you have any thoughts about why you want that done?

Mr Gration—The particular problem for us is that CUSCAL, as the banker and industry association for 200-odd credit unions, will be forced under the current definitions to deal with its member credit unions in its banking relationships as retail clients, which makes our business pretty difficult. That is one example that we can foresee, so we would like the definition aptly changed to ensure that an ADI—an authorised deposit taking institution—is automatically regarded as a wholesale client.

Senator COONEY—That could have been put in the act, though, couldn't it?

Mr Gration—Yes, certainly. But that is the only one that we can foresee. We actually think there needs to be some flexibility to deal with this. Most of these areas, as Lynn Ralph said, involve some grey areas, or areas of shadow, and so we have always argued to the government that there should be considerable scope for ASIC to modify the effect and coverage of the act in practice. That is why we suggested the second amendment.

Senator COONEY—This is really to take account of changes in the industry that we cannot foresee?

Mr Gration—Yes.

Senator COONEY—You would prefer ASIC doing this; if you have to have ASIC, you would take that? I am just trying to get to the position that you would take. Does it really matter, as long as you have flexibility?

Mr Gration—This is a difficult question for industry to answer, particularly in an area as complex as the Corporations Law. Our experience in working with ASIC—particularly, for instance, in policy statement 146—has been fairly good. We know that our experience with ASIC is not shared by others in the industry. I guess, at each stage throughout the submission we have tried to ensure that we are commenting on legislative definitions to get them right. We are seeking the capacity for flexibility and regulation, and we are also seeking capacity for ASIC to vary the effect of the law.

Senator COONEY—The previous witnesses indicated that they had some confidence in ASIC, so that is interesting.

CHAIRMAN—If there are no further questions, Mr Lawler and Mr Gration, thank you very much for appearing before the committee this morning and for your evidence.

[11.16 a.m.]

HANKS, Mr John, Consultant, National Insurance Brokers Association

PETTERSEN, Mr Noel, Chief Executive Officer, National Insurance Brokers Association

SQUIRE, Mr David, National Board Member and Chair of Life Committee, National Insurance Brokers Association

CHAIRMAN—Welcome. We have before us your submission, which we have numbered 44. Do you wish to make an opening statement in relation to the submission before we proceed to questions?

Mr Pettersen—Not as such. We have really not much to add to the submission. It is all there. Generally we are in support of the thrust the government has taken in terms of the new FSR bill. We are here today obviously to answer any questions and hopefully take it further.

CHAIRMAN—I note that in your submission you say that you are pleased that many of the comments and concerns that you included in your submission in April 1999 have been taken up in the draft provisions. Could you outline those ones that you put up that have been accepted?

Mr Pettersen—Our general concern, going back a number of years was that we were in fact being swept up in the solution to other people's problems in that we already had an act of parliament in the Insurance (Agents and Brokers) Act that has worked very well for 15 years. Bottom line consumers have been protected. We have had a very strong, viable industry. So in many respects having to effectively let other sectors of the financial services industry catch up with legislation that has been in force for the role of insurance brokers was perhaps a little awkward back then because, in many respects, the legislation was very effective.

GOING FORWARD, WE UNDERSTAND THE NEED FOR HARMONISATION OF LAWS. WE UNDERSTAND THAT THE RECOMMENDATIONS OF WALLIS NEEDED TO BE TRANSLATED INTO OUR INDUSTRY AS WELL. WE WERE CONCERNED THAT WE WOULD LOSE THE DEFINITION OF INSURANCE BROKER, BEARING IN MIND THAT FOR OVER 300 YEARS IT HAS BEEN ACCEPTED COMMERCIALLY THAT AN INSURANCE BROKER ACTS ON BEHALF OF THE INSURANCE BUYER. THEIR ROLE IS TO PUT IN PLACE THE BEST POSSIBLE INSURANCE FOR THE BUYER, PRIMARILY IN THE COMMERCIAL AREA. SEVENTY PER CENT OF OUR BROKERS BUSINESS WOULD BE IN COMMERCIAL AND PROBABLY THE OTHER 30 PER CENT IN THE MORE DOMESTIC LINE. SO WE WERE CONCERNED THAT THE DEFINITION OF INSURANCE BROKER WOULD BE LOST. OUR THRUST TO GOVERNMENT IN ALL OUR SUBMISSIONS WAS THAT THEY INCORPORATE THE BEST OF BOTH WORLDS IN DRAFTING NEW LEGISLATION. WE HAD A GOOD PIECE OF LEGISLATION IN THE INSURANCE (AGENTS AND BROKERS) ACT AND THE GOOD PARTS OF THAT WE WANTED TO SEE TRANSLATED INTO THE NEW LEGISLATION, SO CERTAINLY WE ARE DELIGHTED TO SEE THAT THE DEFINITION OF INSURANCE BROKER HAS BEEN RETAINED FOR THE PURPOSES OF LICENSING.

WE HAVE GONE ONE STEP FURTHER IN SAYING THAT IN FUTURE, UNDER THE NEW REQUIREMENTS, ANYONE WISHING TO CALL THEMSELVES AN INSURANCE BROKER SHOULD FULFIL THE REQUIREMENTS THAT ARE ALREADY THERE IN TERMS OF HAVING COMPULSORY PROFESSIONAL INSURANCE INDEMNITY, IN TERMS OF HAVING COMPULSORY AUDIT BUT ALSO IN TERMS OF HAVING COMPULSORY COMPETENCIES TO MATCH. IF YOU CALL YOURSELF AN INSURANCE BROKER YOU MUST HAVE THE COMPETENCY TO DO SO IN TERMS OF SKILLS, KNOWLEDGE AND EXPERIENCE. WHAT WE HAVE DONE AS AN INDUSTRY BODY IN THE PAST EIGHT YEARS IS IN FACT PUT IN PLACE A SCHEME KNOWN AS THE QUALIFIED PRACTISING INSURANCE BROKER ACCREDITATION, WHICH IS EFFECTIVELY AN INTERNAL ACCREDITATION WHICH WE BELIEVE CAN BE PICKED UP AND REBADGED IN TERMS OF THE FUTURE COMPETENCIES UNDER THE LICENSING IN THE NEW ACT.

ANOTHER MAJOR CONCERN FOR US AS AN ASSOCIATION ON BEHALF OF OUR MEMBERS, WHO RANGE FROM MULTINATIONAL COMPANIES DOWN TO SMALL OPERATORS AROUND AUSTRALIA, WAS THE ISSUE OF COMMISSION DISCLOSURE. SECTION 32 OF THE ACT ALREADY REQUIRED THE COMMISSION TO BE DISCLOSED UPON REQUEST. THAT HAS WORKED WELL AND IT PROTECTS CONSUMERS. WHEN IT WAS SUGGESTED THAT WE HAVE OPEN FULL TRANSPARENCY ON ALL TRANSACTIONS, FOR A NUMBER OF VITAL REASONS WE WERE PLEASED TO SEE THAT IN THE WASH-UP WE HAVE COMMISSION DISCLOSURE FOR RETAIL PRODUCTS DEALING WITH RETAIL CLIENTS. WE FEEL THAT IS A FAIR AND REASONABLE SOLUTION AND CERTAINLY BOTTOM LINE CONSUMERS WILL BE PROTECTED.

WHEN IT WAS SUGGESTED THAT WE HAVE OPEN, FULL TRANSPARENCY ON ALL TRANSACTIONS, FOR A NUMBER OF VITAL REASONS WE WERE PLEASED TO SEE THAT IN THE WASH-UP WE HAVE COMMISSION DISCLOSURE FOR RETAIL PRODUCTS DEALING WITH RETAIL CLIENTS. WE FEEL THAT IS A FAIR AND REASONABLE SOLUTION AND CERTAINLY THAT BOTTOM LINE CONSUMERS WILL BE PROTECTED. WE WERE DELIGHTED TO SEE THE DEFINITION OF RETAIL CLIENT UNDER THE NEW LEGISLATION. IT WAS PRETTY UNWORKABLE TRYING TO MATCH THE DEFINITION OF THE OLD CORPORATIONS LAW WITH THE DIRECTION THAT WE WERE TAKING IN THE WORLD OF GENERAL INSURANCE. EFFECTIVELY, WE HAD A DEFINITION OF RETAIL AND WHOLESALE CLIENT, BUT IN OUR BUSINESS—GENERAL INSURANCE—IT WAS A DOMESTIC INSURANCE CLIENT COMPARED WITH A COMMERCIAL INSURANCE CLIENT. I THINK IT HAS BEEN WELL ADDRESSED IN THE DEFINITION THAT WE NOW SEE FOR RETAIL CLIENTS. GENTLEMEN, IS THERE ANYTHING THAT YOU CAN ADD TO THAT AS BEING A MAJOR CONCERN? DAVID IS REPRESENTING PRIMARILY THE LIFE SECTOR OF NIBA. WE HAVE LIFE BROKERS AND WE HAVE GENERAL INSURANCE BROKERS. DAVID IS HERE IN THE CAPACITY OF REPRESENTING THE LIFE BROKER SECTOR.

Mr Squire—There is not much more to add to that. We are very pleased with the outcome of the draft bill. We saw the majority of the things that needed to be commented on more as needing fine tuning rather than any major overhauls, so we are very positive.

CHAIRMAN—You indicated your support for the commission disclosure regime. That is a concern that has been raised with us by other sectors of the industry, particularly in relation to what they call the non-risk products. I guess in that sense they are referring to the general insurance products. They argue that the commission does not affect the outcome of that policy.

They also argue that it results in an unlevel playing field between commission agents and similar products sold by employees, that there are effectively commissions or salaries built in there but that they are not disclosed because of the marketing structure, so that creates an unlevel playing field. I am wondering what your reaction is to those concerns that have been raised by others.

Mr Squire—I would address that on the broad basis that, whilst we say we support commission disclosure, there are a couple of things that we would like to see tightened up. One is the concept of back office, which is one that we have fully supported. We believe that there needs to be a standard there. We have actually approached the Investment and Financial Services Association and they have put their hand up to say that they would look at creating a standard, as they have done with many other standards within the industry. We see that as an ideal mix where there are certain services that are provided by a broker to an underwriter that really are back office services. What the representative is being asked to disclose is merely what is going to influence that sale, so we think that is a fair outcome.

WITH REGARD TO DISCLOSURE BY PRODUCT ISSUERS, WE DO HAVE AN ISSUE WITH THAT. WE BELIEVE THAT IF A PRODUCT ISSUER ISSUES EVEN THEIR OWN PRODUCT AND THERE IS AN ELEMENT OF BIAS CREATED BY A COMMISSION FACTOR, THAT SHOULD BE DISCLOSED, SO WE ARE CERTAINLY LOOKING FOR A LEVEL PLAYING FIELD AS FAR AS THAT IS CONCERNED. BY THAT I MEAN THAT, IF A BANK OR AN INSURER IS SELLING SOMETHING ACROSS THE COUNTER, THE CLIENT SHOULD AT LEAST BE PUT IN A POSITION WHERE THEY CAN ASK THE QUESTION AS TO WHAT THE COMMISSION IS AND HAVE IT DISCLOSED. AS THE BILL IS CURRENTLY DRAFTED, THE ONLY TIME THAT WILL HAPPEN IS IF THE CLIENT ACTUALLY RECEIVES ADVICE. IF THERE IS NO ADVICE GIVEN, THE FINANCIAL SERVICES GUIDE THAT IS CONTEMPLATED DOES NOT REQUIRE THE DISCLOSURE THAT THE PERSON MAKING THE SALE IS RECEIVING ANY INCOME THAT MAY CREATE A BIAS. THAT MIGHT BE SIMPLY FULFILLING A QUOTA TO GET A BONUS, IT MIGHT BE AN OVERSEAS TRIP OR EVEN SOME FORM OF COMMISSION. WE THINK THAT, IF A BROKER IS REQUIRED TO DISCLOSE THAT TO A RETAIL CLIENT, SO SHOULD ANYBODY ELSE THAT IS MARKETING THAT PRODUCT.

CHAIRMAN—So you would extend the disclosure rather than pull it back, as some others are arguing should occur?

Mr Squire—I am not saying we are saying extend it, rather that we have a level playing field for all people in the business.

Mr Hanks—Things have moved on a little bit since then and NIBA accepts the view that there should be transparency as far as possible, bearing in mind, though, that general insurance products and risk products are very different from savings products and therefore need to be tailored. NIBA is quite happy with the requirements broadly in the legislation, subject to the comments that David made.

CHAIRMAN—You make the comment in your submission that the bill provides a framework with much of the detail to be fleshed out in policy statements and policy notes from ASIC and so on. Are you comfortable with that process of not actually having the detail spelt out in black letter law but dealt with under a regulatory framework by a regulatory institution?

Mr Hanks—The answer is we are dealing with a very complex situation and a wide variety of products. To have a single set of rules applying across such a wide variety of products would be very difficult. We accept that. While it may be better from a theoretical framework to have details available, the reality is that it would be extremely difficult if not impossible. And, as we move on and introduce new products and things change, the legislation has to be adaptable to and a fixed black-letter law regulation is not suitable for that situation.

Mr Pettersen—We also look forward to working in the development of the regulations. We have adopted a very consultative approach since day one. They have been very open, forthright and very pragmatic in listening to the legitimate concerns of industry and we want to work with them as we go through the next process of regulation.

Mr Hanks—We have had some first-hand experience with working with ASIC. As recently as last week, a policy statement was issued. They sought our input quite actively on that policy statement. It was an outcome that we feel was viable for both the regulator and the industry.

Senator COONEY—I think it would be fair to say that ASIC has got a big tick from everybody this morning. You would be happy to go ahead on the basis that ASIC is going to deal in the way that you spoke about already, although I take it you want them available to you to consult? This question was asked earlier this morning. That may involve may more resources. Have you had any troubles at all in getting in touch with ASIC?

Mr Pettersen—Not really. But I understand that this will certainly stretch their resource. The devil is always in the detail in things like this, but I think we have covered detail throughout the consultation process, although we are not seeing it in the bill. It gives ASIC huge scope as an enforcer, and they have got to have the right sort of people to do that. We are looking forward to working with them on a 'co-regulatory' basis—to work alongside them—especially from our industry. We are here to help them.

Senator COONEY—Had you thought about what you would like done by regulation and what you would like done by policy notes? Or would you just wait and see what issue arises and then deal with it as it arises? How would you like to approach any particular matter?

Mr Hanks—Treasury have foreshadowed, in the documents that they have released, where they see that regulations will be made and what then will be left to ASIC. At this stage, we have no difficulty with the plan as proposed. We need to work these things through and there are obviously areas for potential conflict in this, but up to now we have had a very good relationship with ASIC, as Noel said, and we expect that would continue. The signs are positive in that regard.

Senator COONEY—That is a fair statement: on the basis of how things are now running, there is contentment but should things change then you would reconsider the matter.

Mr Pettersen—Certainly on the basis of what we have seen so far. On the basis of the draft bill, from the early days to what we have in front of us a lot has have happened.

Mr Squire—The working relationship not only with ASIC but also with Treasury has been very good. Right from the outset when Wallis was released, Treasury was anxious to talk to

industry to learn more about how it operated now. We would expect that same sort of thing when the regulations are being drafted —that there would be a certain amount of industry input as we have had for the draft legislation, to make sure that industry is 'coming along for the ride' as well, to make sure it all works.

CHAIRMAN—Thank you very much for your appearance before the committee and for your evidence in answer to our questions.

Proceedings suspended from 11.30 a.m. to 11.44 a.m.

ANDERSON, Dr Michaela, Director, Policy and Research, Association of Superannuation Funds of Australia

SMITH, Ms Philippa, Chief Executive Officer, Association of Superannuation Funds of Australia

CHAIRMAN—Welcome. We have your submission before us which is numbered 3, plus you presented a further submission this morning which we will receive as a submission to the committee. Do you wish to make an opening statement on the submissions before we proceed to questions?

Ms Smith—I might just explain a few of the issues. For a start, I should say we support the direction of the bill and achieving an effective regulatory regime and the need to look at both consumer and industry concerns alike. We support the thrust of where the bill is trying to get to.

WE BELIEVE, THOUGH, THAT THERE NEEDS TO BE FURTHER EXAMINATION AND COMPARISONS ARE NEEDED BETWEEN THE PROVISIONS OF THE BILL AND THE PROVISIONS THAT ARE PROVIDED UNDER THE SI(S) ACT AND THE IMPACT OF THIS BILL ON SI(S) COMPLYING FUNDS. I THINK WHAT NEEDS TO BE UNDERSTOOD IS THAT, UNLIKE OTHER MANAGED INVESTMENT VEHICLES SUPERANNUATION, HAS TWO REGULATORS. IT HAS APRA AND ASIC AND SOME OF THE CONDITIONS IN THE BILL, IN EFFECT, DUPLICATE THE PRUDENTIAL MATTERS ALREADY REGULATED BY APRA.

WHILE THE SI(S) DIFFERENTIATES BETWEEN THE TYPES OF FUNDS AND PRODUCTS, THE NEW BILL DOES NOT. IT DIFFERS FROM SI(S) IN A NUMBER OF WAYS. IF ALL OF THIS IS NOT EXAMINED AND TEASED OUT IN MORE DETAIL, IT WILL LEAD TO DUPLICATION AND OVERLAP BETWEEN THE REGULATORS, AS WELL AS CONFUSION AND ADDITIONAL REGULATORY AND ADMINISTRATIVE BURDENS—ALL OF WHICH GO TO THE COSTS OF FUNDS AND, HENCE, TO THE COSTS THAT WILL BE BORNE BY THE MEMBERS AND THE CONSUMERS.

I WILL JUST FLAG A COUPLE OF CRITICAL POINTS WHERE THE CONFLICT IS PROBABLY GREATEST AND NEEDS GREATEST ATTENTION. FOR EXAMPLE, SI(S) DIFFERENTIATES BETWEEN PUBLIC OFFER FUNDS, WHICH HAVE APPROVED TRUSTEES, AND WHAT WE CALL STANDARD EMPLOYER SPONSOR FUNDS, WHICH HAVE A REPRESENTATIVE TRUSTEE STRUCTURE BEHIND THEM. WE WOULD RECOMMEND THAT THE LICENSING OBLIGATIONS SHOULD BE SATISFIED BY A FUND OPERATING WITH A TRUST STRUCTURE THAT COMPLIES WITH SI(S) AND THAT THAT FUND SHOULD NOT REQUIRE ADDITIONAL LICENSING REQUIREMENTS, WHICH IS REALLY THE IMPLICATION OF THE BILL AS IT STANDS AT THE MOMENT.

LINKED WITH THAT AND OTHER POINTS, THE BILL LOOKS AT WHAT FINANCIAL PRODUCT ADVICE CAN BE GIVEN AND THE LICENSING ARRANGEMENTS THAT STAND BEHIND THAT. WE WOULD SAY THAT FINANCIAL PRODUCT ADVICE FOR INTERNAL FUND CHOICES—IT MIGHT BE ABOUT INVESTMENT CHOICE—SHOULD NOT REQUIRE A SPECIAL LICENCE ARRANGEMENT. THE BASIC LICENCE SHOULD COVER THOSE SITUATIONS WHERE IT IS A STANDARD EMPLOYER SPONSOR FUND. LATER PERHAPS, WE CAN TEASE OUT—AGAIN, IT IS AN AREA OF THE BILL THAT DOES NEED

TEASING OUT—EXACTLY WHAT THE DIFFERENTIATING POINT IS BETWEEN FACTUAL INFORMATION VERSUS ADVICE. WE WOULD SAY THAT THAT BOUNDARY LINE SHOULD AT LEAST BE ABLE TO COVER SITUATIONS WHERE THAT FUND, FOR THOSE INTERNAL FUND CHOICES, CAN GIVE OUT INFORMATION IN COMPREHENSIBLE AND CLEAR EXAMPLES. BUT THERE IS A CONTINUUM THERE BETWEEN INFORMATION AND ADVICE. FOR THE FUNDS TO BE ABLE TO OPERATE CLEARLY, THEY NEED THAT TO BE SPELT OUT WITH EXAMPLES BECAUSE THE CONTINUUM IS BLURRED AT THIS POINT IN TIME.

ANOTHER EXAMPLE THAT I GIVE, WHICH PERHAPS HIGHLIGHTS WHERE THERE IS CONFUSION AT THE MOMENT BETWEEN THE SI(S) OBLIGATIONS AND THE NEW BILL OBLIGATIONS AND WHERE THERE IS AN OVERLAP OF THE PRUDENTIAL REQUIREMENTS, GOES TO THE BILL'S PROPOSITION THAT THERE SHOULD BE AN IMPOSITION OF A CAPITAL ADEQUACY REQUIREMENT. WE WOULD SAY THAT THIS WOULD REALLY GO AGAINST THE NOTION OF THE NOT-FOR-PROFIT FUNDS WHICH ARE OPERATED THROUGH THE CURRENT TRUSTEE ARRANGEMENTS. IF THOSE CAPITAL ADEQUACY ARRANGEMENTS WERE REQUIRED, YOU REALLY WOULD BE UNDERMINING THOSE TRUST ARRANGEMENTS IN THAT NOT-FOR-PROFIT AREA. I MIGHT REMIND YOU THAT WE ARE TALKING HERE ABOUT THE CORPORATE FUNDS AND THE INDUSTRY FUNDS, WHICH COLLECTIVELY MAKE UP ABOUT 30 PER CENT OF THE SUPERANNUATION ASSETS AT THIS POINT IN TIME AND WHICH I THINK PROVIDE AN IMPORTANT COMPETITIVE DIFFERENCE IN THE NATURE OF FUNDS THAT ARE AVAILABLE TO PEOPLE. I THINK OUR OBJECTIVE SHOULD BE TO SUSTAIN THOSE STRUCTURES. I WILL POINT OUT TO YOU THAT, AGAIN TO MY MIND, THAT GOES TO A PRUDENTIAL ISSUE WHICH IS ALREADY COVERED UNDER APRA. APRA HAS COVERED THAT BY THE DIFFERENTIAL APPROACH IT TAKES TO THE DIFFERENT TYPES OF FUNDS AND TRUST STRUCTURES.

IN SUMMARY, ON THE LICENSING SIDE, WHAT WE ARE SAYING, IN TERMS OF THE CONCEPTUAL FRAME THAT WE SHOULD BE OPERATING IN, IS THAT THE LICENSING OF SUPER FUNDS SHOULD BE BASED ON THE SIS STATUS. WE WOULD SAY THAT, AS FAR AS THE BILL IS CONCERNED, IT SHOULD RECOGNISE THE SIS CONDITIONS AND, IF A FUND SATISFIES THOSE CONDITIONS, IT SHOULD BE REGARDED AS MEETING THE LICENSING ARRANGEMENT THAT IT REQUIRES. THAT WOULD BE ONE MODEL—THAT IT JUST RECOGNISES THE SIS STRUCTURE AND THE LICENSING ARRANGEMENTS.

Senator COONEY—So you would have a provision that says 'Any fund that is operating in accordance with SIS, complies with this—

Ms Smith—And complies with the SIS.

Senator COONEY—But then you would say 'meets all the requirements of this act'.

Ms Smith—Yes, but you would have to make sure that you are not duplicating, because the new bill requires additional licensing requirements in some situations. What we are saying is that the bill should be saying that, if a fund complies with SIS and the obligations set out by SIS, it meets the licensing requirements of the new bill. Another way of approaching it would be just to mirror the SIS provisions in the new bill.

Senator GIBSON—In their submission to us and this morning, IFSA basically suggested—and, again, this is going to your point about avoiding duplication—that if someone is already

licensed under APRA or under the Managed Investment Act—and there are two regimes already there—that should be sufficient to cover it.

Ms Smith—Yes, we would agree with that.

CHAIRMAN—They also were of the view that there should not be a different disclosure regime for superannuation.

Ms Smith—Yes, and I will move on to disclosure. I think the objective would be good if the disclosures can be the same. The one thing I would say about super is that the disclosure arrangements for super, probably more than any other product, are important because of the coverage that superannuation has. There is the compulsory nature of it and the very breadth of the coverage that means we are covering all education and occupational groups. That ability to understand and compare, I think, is critical. If we can get it right for super, we have probably created the model for other products, because the consumer that you need to get to is broader, whereas, with other products, you are already perhaps moving into a more sophisticated end of the market. We would agree with that objective of comparability but, in some ways, super is the test and flashpoint for that.

WE SUPPORT THE ALTERNATIVE (A) APPROACH RATHER THAN THE PROSPECTUS APPROACH AS BEING FAR MORE WORKABLE. I WOULD POINT OUT, THOUGH, THAT THE STARTING BASE IN THE DISCUSSION DOCUMENTS THAT WERE TALKING TO THE BILL WOULD INDICATE THAT THE STARTING BASE THAT WAS BEING THOUGHT ABOUT WHEN IT CAME TO SUPER WAS THE DRAFT PREPARED BY THE ISC IN 1998. WE WOULD SAY THAT THAT WOULD BE A STEP BACKWARDS. THE CONTEXT IN WHICH THE ISC PUT THAT DRAFT FORWARD WAS ALWAYS REGARDED BY BOTH THE ISC AND THE INDUSTRY AT THAT TIME AS AN INTERIM SET. IT WAS PUT FORWARD IN THE CONTEXT OF THE CHOICE OF FUND BILL GOING THROUGH QUICKLY, AND THERE HAD TO BE SOMETHING STANDING THERE BUT IT WAS ALWAYS SEEN TO BE AN INTERIM SET PENDING CLERP 6 BEING TEASED OUT. WE, AS AN INDUSTRY, HAVE ALREADY MADE SOME ATTEMPTS TO TRY TO TEASE IT OUT. WE HAVE DEVELOPED A KEY FEATURE STATEMENT WHICH HAS ACHIEVED SOME LEVEL OF AGREEMENT ACROSS THE INDUSTRY ON SOME OF THE ISSUES LIKE FEES AND CHARGES, PERFORMANCE AND HOW THINGS SHOULD BE DISCLOSED, BUT WE THINK WE HAVE A BIT OF A WAY TO GO ON THAT ALSO.

WE HAVE NOW EMBARKED ON SOME COMPREHENSION TESTING, USING THE KEY FEATURE STATEMENTS WE HAVE DEVELOPED AS AN INDUSTRY. WE ARE ABOUT TO GO OUT IN THE FIELD, WHERE IT WILL BE ONE-ON-ONE TESTING WITH REAL LIFE CONSUMERS TO SEE WHAT THEY UNDERSTAND BY THE TERMS BEING USED. THAT IS STAGE 1. STAGE 2 IS TO SEE HOW THEY FARE WHEN WE ASK THEM TO COMPARE PRODUCTS. A WORD OF WARNING: THE STARTING BASE THAT HAS BEEN PUT FORWARD WAS ALWAYS SEEN AS AN INTERIM STARTING BASE, ALTHOUGH I THINK THERE IS AGREEMENT THAT IT IS VERY DESIRABLE TO MOVE TO A KEY FEATURE STATEMENT REGIME WHERE LESS IS MORE AND WHERE THE REALLY CRITICAL ISSUES ARE COMPARED. BUT WE HAVE TO BREAK THAT DOWN FURTHER. BECAUSE OF THE NATURE OF THE INDUSTRY, WE PROBABLY HAVE TO GET TO A POINT WHERE WE ARE DEALING WITH REGULATIONS OR AUTHORISED CODES, SO THAT WITH THE END RESULTS THE CONSUMER CAN COMPARE LIKE WITH LIKE IN A RELATIVELY UNIFORM FASHION. THERE IS ALWAYS A CONUNDRUM HERE. WE

ARE NOT WANTING TO GET INTO BLACK AND WHITE VERY REGULATORY PROSE WHICH HAS ABSOLUTELY NO MEANING FOR PEOPLE, BUT WE WANT ENOUGH COMMONALITY SO THAT WHEN PEOPLE DESCRIBE, FOR EXAMPLE, FEES AND CHARGES, THE CALCULATIONS OR THE PERFORMANCE FIGURES ARE USING THE SAME STARTING BASE OR THE SAME CALCULATIONS.

THERE ARE SOME OTHER ISSUES THAT NEED ATTENTION. AGAIN, THEY REVOLVE AROUND THE PRACTICAL NATURE OF THE INDUSTRY AND THE FACT THAT A LOT OF SUPERANNUATION IS FROM COMPULSORY PAYMENTS AND THE TIMING ISSUES OF PAYMENTS HAVING TO BE PUT INTO A FUND WITHIN CERTAIN TIMES. THE CURRENT DISCLOSURE ARRANGEMENTS FOR EMPLOYER SPONSORED SCHEMES ALLOW PROVISION OF DISCLOSURE DOCUMENTS AFTER JOINING A FUND. WE THINK, AS A PRACTICAL STEP, THAT NEEDS TO BE RETAINED BECAUSE, EVEN IN A CHOICE OF FUND ENVIRONMENT, YOU WILL HAVE COLLECTIVE AGREEMENTS OR DEFAULT ARRANGEMENTS WHERE MEMBERSHIP IN EFFECT BECOMES AN AUTOMATIC EVENT AND HAS TO BE DONE WITHIN A CERTAIN TIME FRAME. SO THAT THING ABOUT ALLOWING IT TO HAPPEN AFTERWARDS IS THE ONLY PRACTICAL WAY FORWARD IN THAT SITUATION. WE WOULD SUGGEST THAT IT IS COUPLED WITH PROHIBITION OF PRESSURE SELLING AND IS COUPLED WITH COOLING-OFF PERIODS SO THERE CAN BE A QUICK RESOLUTION IF PEOPLE HAVE GOT THEMSELVES IN FUNDS THAT ARE NOT SUITABLE FOR THEM. THE DRAFT PROVISIONS, WE NOTE, DO TALK ABOUT UNCONSCIONABLE CONDUCT, BUT WE DO NOT THINK THAT GOES FAR ENOUGH. IT PROBABLY DOES NEED TO SPELL OUT IN MORE DETAIL AND HAVE CLEARER RULES ABOUT COLD CALLING AND THOSE SORTS OF POTENTIAL SELLING ARRANGEMENTS THAT MIGHT BE THERE.

THE OTHER ISSUES ARE FLAGGED FOR PERHAPS MORE ATTENTION. WITH DISCLOSURE, WHAT DO YOU DISCLOSE? OUR CONCERN IS THAT WE DO NOT WANT DISCLOSURE OF EVERYTHING. AGAIN, A CHECKLIST APPROACH OF EVERY CONCEIVABLE THING REALLY DOES NOT HELP UNDERSTANDING. THERE DOES HAVE TO BE THE CORE THERE, BUT IT NEEDS TO BE WHAT IS RELEVANT SO IT CAN BE UNDERSTOOD.

ANOTHER AREA WE BELIEVE NEEDS FURTHER ATTENTION IS SUPPLEMENTARY INFORMATION—IN WHAT SITUATION, WHAT CHANGES NEED TO TRIGGER SUPPLEMENTARY INFORMATION AND WHEN. WE NEED THINGS THAT ARE WORKABLE AND NOT TOO COSTLY. IF YOU ARE REQUIRING MAIL-OUTS TO A MILLION-PLUS PEOPLE AT THE DROP OF A HAT, IT STARTS TO ADD UP AND BECOMES COSTLY. AGAIN, WE THINK SI(S) PROBABLY PROVIDES THE RIGHT FRAME ON THIS IN TERMS OF BOTH ONGOING DISCLOSURE AND SIGNIFICANT EVENT DISCLOSURE.

TURNING TO COMPLAINTS, THERE IS A POTENTIAL DUPLICATION EMERGING HERE IN TERMS OF FUNDS HAVING TO SIGN UP TO TWO BODIES FOR THE RESOLUTION OF COMPLAINTS. WE BELIEVE THAT THE SCT IS THE APPROPRIATE BODY FOR SUPERANNUATION FUNDS AND, FROM OUR PERSPECTIVE, IT IS DESIRABLE THAT THE SCT DEALS WITH ALL COMPLAINTS RELATED TO THE OPERATION OF SUPERANNUATION FUNDS.

THE LAST POINT I WILL FLAG IS THE NOTION OF USER PAY AND THE SUGGESTION OF NEW FEES; FOR EXAMPLE, WITH THE LODGMENT OF DISCLOSURE DOCUMENTS—POTENTIALLY COSTING $17 MILLION, WHICH I THINK WAS THE FIGURE QUOTED IN THE PAPERS. I JUST REMIND YOU THAT SUPER FUNDS ALREADY PAY QUITE SUBSTANTIVE LEVIES THROUGH APRA AND THAT PART OF THAT MONEY ALREADY GOES TO ASIC. SO IF WE ARE LOOKING

AT SPECIFIC USER PAY, IT REALLY NEEDS TO BE NEGOTIATED IN THE LIGHT THAT THE INDUSTRY IS ALREADY PAYING A LEVY MECHANISM TO COVER REGULATION, COMPLAINTS AND PARTS OF DISCLOSURE THROUGH THE LEVY ARRANGEMENTS THAT ARE RAISED NOW THROUGH APRA AND THAT SOME IS REALLOCATED TO ASIC. NOT TO TAKE THAT INTO ACCOUNT WOULD REALLY BE A SORT OF DOUBLE WHAMMY BEING FACED BY THE INDUSTRY. I WILL LEAVE IT THERE. I AM SURE YOU HAVE GOT MANY QUESTIONS.

CHAIRMAN—Could you perhaps just outline why you think that the compulsory nature of employee superannuation distinguishes that as a product from other financial products?

Ms Smith—To me it means that the onus on super funds is higher than on some of the other product areas. The compulsion was always there as a collaborative effort, really, with government to ensure there is an adequate retirement income system, so it is intermeshed with our age pension arrangements and a supplement, both to improve adequacy and to reduce the strain on government. So it means that people need to have confidence in the system that the money is going to be there at the end of the day and that it is going to deliver. If we, both as the government and the industry, want to ensure that confidence is retained we have to ensure that the regulatory regime is there.

ALSO, JUST ON COMMUNICATING WITH INDIVIDUALS, THE HURDLE IS THAT MUCH HIGHER, I THINK, THAN FOR OTHER FUNDS BECAUSE OF THE EDUCATION SPREAD THAT IS THERE. SUPERANNUATION HAS A MUCH BROADER COVERAGE, MEANING THAT PEOPLE ARE INVOLVED IN A SAVINGS OR INVESTMENT PRODUCT, THAN ANYWHERE ELSE. TAKE SHARES—YES, 50 PER CENT OR SO OF PEOPLE MIGHT HAVE BEEN INVOLVED AND MIGHT NOW HAVE SOME EXPOSURE TO SHARES, BUT THE EXPOSURE ON AVERAGE IS ABOUT $5,000 AND IT TENDS TO BE SKEWED TOWARD THE HIGHER INCOME, MORE SOPHISTICATED END OF THE COMMUNITY. TO ME THERE ARE TWO ASPECTS: ONE IS CONFIDENCE IN TERMS OF REQUIRING COMPULSION FOR A CERTAIN PUBLIC POLICY OBJECTIVE; THE OTHER IS JUST THE SPREAD AND NATURE OF PEOPLE. THEY ARE NOT SOPHISTICATED INVESTORS.

Dr Anderson—They are also less likely to take professional advice. If you are an investor in another form, you probably are taking advice. We are talking about most of these people not taking advice.

CHAIRMAN—Thanks for that. In terms of supervision and disclosure, you are 'on all fours' with IFSA, in terms of the view that if super is covered by APRA then it should not be covered under this legislation but the disclosure regime should be uniform across the board?

Ms Smith—If we can achieve that. There is a long way to go. As I said, we are about embark on the comprehension testing of superannuation products and what people understand with it. It would be ideal if we can to a uniform regime across all products. At the end of the day and as we work down that, it may be that different products need certain core things which are uniform across all areas, but it might be more of a matrix that we are dealing with in terms of what disclosure becomes important for different types of products and how it is described.

CHAIRMAN—Do you see any of the provisions of the draft bill undermining the existing trustee structure?

Ms Smith—Yes. The capital adequacy was one that I flagged. I think that would undermine the not-for-profit arrangements, anyway. Part of the reason why we are talking about the differentials, in looking at the different structure of funds, is to take account of the differentials between the public offer and the more traditional employer sponsored fund arrangement, which has a trustee base behind it. They are operating in different ways and with different 'consumer catchments'.

CHAIRMAN—You say that your main concern is to achieve the maximum level of harmonisation between existing legislative arrangements for super and this draft bill. Apart from particular areas you have outlined in your remarks, are there any other particular areas of concern that are impediments to achieving that harmonisation?

Ms Smith—No. The important thing is to recognise the SIS structure and the obligations. At the moment, it is done in a way that conflicts in a number of areas and creates duplication. If that can be done in a way that takes account of the fact that they are already operating and they are complying so it is more like an oversight of broad principles, and then perhaps at the level of operational detail works more as a 'matrix' model that comes underneath that, this would probably help to achieve both those overriding goals but come down to the practical detail of being operational.

Dr Anderson—Within this expanded document, we have documented some of the areas where there is potential duplication or it will not be clear which regulator has the power. On page 25, we look at comparing some of the provisions at the moment and who has the power. In some areas—like: who can suspend the trustee?—it becomes unclear, when you are reading, whether it would be the prudential regulator or the regulator which for superannuation funds is the consumer considerations regulator. It is not clear how one would take precedence over the other. We ourselves would see a lot of the things as falling back on to the prudential regulator as the 'lead regulator' in a lot of those sorts of areas and when you are disqualifying a trustee.

Senator COONEY—Given the special nature of superannuation—and I can follow what you are saying—there would be a lot of good reasons for having any amendments put in SI(S) so that anybody who is dealing with superannuation would have to go to only one act. Anything that you wanted to take out of this new bill should be taken out and put into SI(S).

Ms Smith—There is a lot to be, isn't there, for a bill that contains the full set of rules rather than people having to jump from one set to another. Conceivably, that could be done, again, when we are talking on the disclosure side, by mirror sets of regulations. As I said, my feeling is that in many ways super has to be the starting point of getting to better disclosure arrangements. So in effect it may act as the model starting point of debate on some of the other products.

Senator COONEY—The other problem might be a conceptual one, as you say; that if you have this new bill regulating superannuation in addition to the Superannuation Industry (Supervision) Act, the concept you might get is that superannuation is like any other investment. This is what the chairman has been dealing with in his early questions. Superannuation does touch on very vulnerable people, on people who are not sophisticated in the area of insurance and who are on comparatively low wages but who have to make this contribution or whose employers make the contribution.

Dr Anderson—That is the other important point, I think: it is often that the person who is providing the money is not actually the end user. So it does give it a different slant when you are talking about the super guarantee part of it or award super. It is probably that that makes some of the problems that we have highlighted here this morning come about.

Senator COONEY—How much of the superannuation funds go to regulation? I do show some concern here. If you have a fairly lowly-paid person working in a relatively unsophisticated job, it is a problem if his or her returns are lessened because of regulation. Given the particular nature of superannuation, there is some good argument to say that the supervision and regulation of it ought to be paid for out of general community funds, out of consolidated revenue.

Dr Anderson—That would be a good idea!

Senator COONEY—There is an argument for that if this is the scheme that is going to keep me in my old age.

Ms Smith—We would echo that to a certain extent. As you said, the funds have a part to play, but I think the importance of education around superannuation is beyond that again. So, certainly in the choice of fund situation, we have argued that government should also be providing a level of funding to ensure that there is informed consent, et cetera. To the extent that bad choices are made in superannuation, we, as a community, end up paying for it because the reliance on the aged pension would be that much higher.

Dr Anderson—If you look at administration costs, you get a feel for some of the compliance costs within there. I think there have been two pressures on it: the compliance costs have been going up at the same time because there has been more competition within the area, especially with the industry funds. They have been driving down the administration costs. Our surveys show that industry funds have the lowest administration costs, probably because of some hard bargaining, and the average across is about $1.66 a week.

Ms Smith—That is leaving out the retail funds. The average of $1.60 a week was for the industry corporate funds and public sector funds. We could not get good information from the retail funds and so we did not include them in our survey. But Michaela is right, that there have been two pressures. The introduction of e-commerce has allowed some reduction in costs, but the increased pressure on costs has gone on the increased advertising and communication that is now there in the industry.

Dr Anderson—And certainly compliance issues are—

Ms Smith—And the dreaded surcharge.

Senator COONEY—Do you have any idea of how much comes out of the superannuation fund because of the surcharge, the advertising and the compliance costs, and I think you said you have to pay an amount to ASIC?

Dr Anderson—We only really have it in aggregate for a certain sector of the funds that we have been able to survey. The research showed that some of the older types of funds, the

defined benefit funds, those corporate funds, were more expensive because they had a harder time dealing with the compliance costs. All of the compliance stuff is written in terms of defined contribution accumulation funds and they are really hit by compliance costs because it is just so hard for them to make the jump. Certainly within the industry people talk a lot about increasing compliance costs and therefore the difficulty in keeping the costs down.

Ms Smith—We can provide you with the research, if that would be of interest to you.

Senator COONEY—Could you? Thanks for that.

Senator GIBSON—You raised the point of capital adequacy. Not that I know anything much about it, but I just assumed the capital adequacy requirements were placed there to make sure we are not dealing with tiny little irrelevant entities that could not provide proper service. Do you have an alternative way of describing the not for profit entities that could achieve the same end?

Dr Anderson—If you look at not for profit, we are talking about the corporate funds, the industry funds and the public sector funds, I suppose. The way they are governed is with equal representation, which is one difference there. In terms of their capital adequacy, the traditional corporate fund, which was a defined benefit fund, had in fact an employer backing behind it. To some extent, even when those funds go—

Senator GIBSON—But they are decreasing, aren't they, basically?

Dr Anderson—Yes, but when they go into an accumulation fund I think there is still perhaps a moral obligation with the employer that is still left, but you also have that equal representation thing there which is the watchdog over what is happening between the employer and the employee representatives on that board. Within the industry funds, there is no one employer sponsor standing behind it, but neither is there a shareholder or any other group, and you have that equal representation, usually with employer organisations and employee organisations. I think SIS sees that as the prudential regime, that watchdog, rather than the capital adequacy one which is required if you go public offer, if you are offering to the public at large, not to a particular employer or a particular employer group.

Senator COONEY—Employer or employee group?

Dr Anderson—With some of them, they are targeting a particular industry. As soon as they go wider and the relationship is not just with the employers but with the individuals, then they have to go to public offer, and that means they get capital adequacy provisions—

Senator GIBSON—But, getting back to the principle of trying to make sure that there are not tiny entities set up, what is to stop you and I from forming a retired politicians fund, calling it an industry fund—it being a tiny entity—and recruiting a few members? I assume that that was the sort of principle that was behind the capital adequacy thing.

Dr Anderson—If you did that, you would still have to become a regulated fund.

Senator GIBSON—Yes, that is right.

Dr Anderson—You would still have to meet the SIS requirements.

Senator GIBSON—Yes, you would.

Dr Anderson—They are fairly onerous. The trust law and the SIS requirements that put in standards are really your alternative to the capital adequacy, because you really have to behave yourself. That is the requirement.

Senator GIBSON—But those same rules apply to the public offer funds too.

Ms Smith—They have an approved trustee. They do not have the equal representation arrangement.

Senator GIBSON—Yes, that is right.

Dr Anderson—So you are lacking one watchdog in that you have not got both sides—the employer and the employee—looking at each other across a boardroom table. So that, I suppose, is there, and they are going out and offering their products in a different way to the community at large.

Senator COONEY—Would you develop that for us, please?

Dr Anderson—If I am at public offer, I am saying to anybody, by and large, 'You come.' If I am not at public offer, my relationship is with the employers of these people.

Ms Smith—The starting point is that, if that capital adequacy requirement were imposed on the not-for-profit ones, then it would be a hurdle that a lot of them would not be able to meet. So the question really is: what are the other structures around that may not require that but give you the level of confidence?

Senator COONEY—Have you spoken to government about this? I was going to go on to ask whether you would suggest that it all be kept in one act, rather than spreading the regulation of superannuation across the legislation as it is now.

Ms Smith—We have certainly raised our concerns and talked with people. To be honest, I think that the way the bill has been developed to date is that the time frame has been such that the people working on it have been making herculean efforts. What did not happen was that the re-examination went back to SIS and how that interfaced, so they were working almost from the other end of the spectrum. What we are pleading is this: please look at the interface. We are saying that there are two ways. One is that this bill says that, if a fund complies with SIS, then it complies with the licensing arrangement of this new bill or puts in mirror the SIS thing. You could put that in reverse too and make sure that everything that relates to superannuation funds that is new from the bill is also put in mirror back in SIS. I think there is some merit in that because it means that people need only go to one source and try to understand what the rules of the game are.

CHAIRMAN—As there are no further questions, thank you very much, Ms Smith and Dr Anderson, for appearing before the committee today.

[12.27 p.m.]

GOODMAN, Ms Sarah, Head of Group Compliance, Commonwealth Bank

LESTER, Mrs Jill, Head, Group Corporate Relations, Commonwealth Bank

CHAIRMAN—I welcome the representatives of the Commonwealth Bank. We do not have a written submission from you so we will take your verbal submission.

Mrs Lester—We have sent you a copy of a submission we put to Treasury.

Ms Goodman—It was emailed on Friday afternoon.

CHAIRMAN—It was a bit late to get to us.

Mrs Lester—I am sorry about that.

Ms Goodman—We can send one down straight away as soon as we go back to the office.

CHAIRMAN—Okay. Can you outline the major areas of your submission.

Mrs Lester—We are very pleased to have this opportunity to highlight the bank's approach to the Financial Services Reform Bill. The bank has very much appreciated the very consultative approach that has been followed all along on this process. Sarah Goodman, as head of group compliance, will talk about the bank's specific concerns on the Financial Services Reform Bill and she would like to highlight those.

BEFORE I HAND OVER TO SARAH, I WOULD LIKE TO MAKE SOME GENERAL POINTS ABOUT WHERE THE COMMONWEALTH BANK GROUP IS COMING FROM. THE COMMONWEALTH BANK OFFERS THE MOST DIVERSIFIED FINANCIAL SERVICES IN AUSTRALIA AND COMBINES SUCCESSFUL DOMESTIC AND INTERNATIONAL BUSINESSES IN BANKING, FUNDS MANAGEMENT, LIFE INSURANCE AND INSTITUTIONAL BANKING. AFTER THE MERGER WITH COLONIAL LTD, THE BANK NOW HAS AROUND 10 MILLION AUSTRALIANS AS CUSTOMERS. THE BANK IS AUSTRALIA'S MOST ACCESSIBLE FINANCIAL SERVICES PROVIDER AND HAS AN EXTENSIVE BRANCH AND ELECTRONIC NETWORK, AN EZY BANKING ARRANGEMENT WITH WOOLWORTHS WHICH GOES TO ABOUT 640 STORES, AN ALLIANCE WITH AUSTRALIA POST AND ALSO RELATIONSHIPS WITH INDEPENDENT FINANCIAL ADVISERS AND INSURANCE AGENTS. ALL UP, THE BANK HAS AROUND 110,000 ACCESS POINTS ACROSS AUSTRALIA, WITH AROUND 40 PER CENT OF THOSE IN RURAL AND REGIONAL AUSTRALIA. THE LEGISLATION WILL THEREFORE HAVE SIGNIFICANT IMPLICATIONS FOR MANY ASPECTS OF THE COMMONWEALTH BANK'S BUSINESS. IN PARTICULAR, IT WILL IMPACT OUR SCOPE FOR PROVIDING ACCESSIBLE AND FAIRLY PRICED FINANCIAL SERVICES IN RESPONSE TO CONSUMER DEMAND FOR FLEXIBLE AND CONVENIENT SERVICES FOR TECHNOLOGICAL INNOVATION IN A HEIGHTENED COMPETITIVE

ENVIRONMENT. I WOULD LIKE TO HAND OVER TO SARAH TO TALK ABOUT THE SPECIFIC CONCERNS FOR THE LEGISLATION.

Ms Goodman—Our detailed submission to Treasury outlined all of our concerns in response to the draft bill which was issued earlier this year. I would like to take you through our 10 major concerns. Three of those concerns are worth discussing in a little more detail. Forgive me if I run through it at a very high level but, if I briefly canvass those major concerns, then I would be available for any questions.

THE FIRST ISSUE IS THE LICENSING REQUIREMENTS THAT ARE PROPOSED BY THE BILL. THE NEW LICENSING REQUIREMENTS WILL OVERLAP WITH EXISTING APRA PRUDENTIAL REGULATION REQUIREMENTS. THIS WILL AFFECT BANKS, INSURANCE COMPANIES AND REGULATED SUPERANNUATION TRUSTEES AND WILL RESULT IN EFFECTIVE DUPLICATION OF LICENSING. THE GROUP RECOMMENDS THAT THE NEW REGIME RECOGNISE THAT APRA REGULATED BODIES ARE ALREADY SUBJECT TO SUBSTANTIAL PRUDENTIAL CONTROL DESIGNED TO ENSURE THEIR STABILITY AND EFFICIENCY. WE RECOMMEND THAT THE BILL PROVIDE APPROPRIATE EXEMPTIONS FOR APRA REGULATED BODIES.

THE SECOND ISSUE OF MAJOR CONCERN IS THE INCLUSION OF DEPOSITS WITHIN THE REGIME. THERE IS NO EVIDENCE TO SUGGEST THAT THE CURRENT REGIME FOR THE REGULATION OF DEPOSIT FACILITIES IS INADEQUATE. THE CURRENT LEVEL OF REGULATION HAS OPERATED TO THE ADVANTAGE OF CONSUMERS BY ALLOWING BANKS TO OFFER SIMPLE, FLEXIBLE AND LOW-COST PRODUCTS. THE INCLUSION OF DEPOSIT TAKING FACILITIES IS THEREFORE UNWARRANTED, AND WE RECOMMEND REMOVING ADIS—APPROVED DEPOSIT-TAKING INSTITUTIONS—FROM THE LIST OF SPECIFIC INCLUSIONS.

THE THIRD AREA OF CONCERN I WOULD LIKE TO SPEAK TO IN A LITTLE MORE DETAIL, AND THAT IS THE DEFINITION OF ADVICE WHICH IS INCLUDED WITHIN THE BILL. YOU WILL BE AWARE THAT AT THE MOMENT THE CORPORATIONS LAW COVERS THE SALE OF SECURITIES BY WAY OF ADVICE. THE BILL CONTEMPLATES EXTENDING THE CORPORATIONS LAW TO COVER ALL FINANCIAL PRODUCTS, AND THEREFORE THE DEFINITION ADVICE HAS NEEDED SOME REWORKING AND INDEED SOME DEFINING. THERE ARE THREE COMPONENTS TO THE DEFINITION. THE DEFINITION TALKS ABOUT RECOMMENDATIONS, STATEMENTS OF OPINION AND INTERPRETATION OF INFORMATION. WE ACKNOWLEDGE THAT RECOMMENDATIONS AND STATEMENTS OF OPINION ARE CLEARLY ADVICE AND SUGGEST THAT THEY CLEARLY SHOULD REMAIN WITHIN THE DEFINITION. HOWEVER THE WORDS 'INTERPRETATION OF INFORMATION' GO WELL BEYOND WHAT WOULD ORDINARILY BE ENVISAGED BY THE TERM 'ADVICE'. IT POTENTIALLY ENCOMPASSES SIMPLE OVER-THE-COUNTER TRANSACTIONS SUCH AS THE COMPARISON OF PRODUCTS AND ATTEMPTS BY FRONT-OFFICE STAFF TO EXPLAIN INFORMATION TO CUSTOMERS. AS A RESULT, OVER-THE-COUNTER SALES OF EVEN SIMPLE FINANCIAL PRODUCTS AND SERVICES ARE LIKELY TO AMOUNT TO ADVICE AND, AS SUCH, THEY WOULD REQUIRE A LENGTHY NEEDS ANALYSIS. AN ADVICE PROCESS, AS YOU KNOW, ENTAILS ASSESSING THE FULL FINANCIAL CIRCUMSTANCES OF THE CUSTOMER, OBTAINING A WIDE AMOUNT OF QUITE INTRUSIVE FINANCIAL INFORMATION AND THEN ASSESSING THE NEEDS OF THAT CUSTOMER, FOLLOWED BY A RECOMMENDATION. THIS WILL SIGNIFICANTLY IMPACT ON THE ABILITY OF PROVIDERS TO OFFER PRODUCTS THROUGH A SIMPLE AND EFFICIENT SALES PROCESS.

FINANCIAL ADVICE IS SIMPLY ONE ASPECT OF THE RANGE OF PRODUCTS PROVIDED BY FINANCIAL SERVICES PROVIDERS IN ORDER TO MEET CUSTOMER NEEDS. HOWEVER, IT IS ARTIFICIAL TO ASSUME THAT ALL CONSUMERS ARE SEEKING AN ADVICE PROCESS WHEN THEY COME IN TO SEE THEIR FINANCIAL SERVICES PROVIDER. MOST CONSUMERS ARE WELL AWARE OF THEIR PRODUCT NEEDS AND ARE SIMPLY LOOKING FOR A QUICK AND EFFICIENT SALES PROCESS. THE LARGE MAJORITY DO NOT REQUIRE NOR DO THEY WANT A DETAILED AND LENGTHY ADVICE PROCESS. HOWEVER THE BILL, WITH ITS CURRENT DEFINITION OF ADVICE, WILL MEAN THAT. TO GIVE YOU AN INDICATION OF THE DIMENSION OF THE PROBLEM: AT THE MOMENT THE GROUP HAS SOME 17,500 STAFF IN ITS BRANCH NETWORK. AT THE MOMENT, ABOUT 1,200 OF THOSE PEOPLE ARE PROPER AUTHORITY HOLDERS; IN OTHER WORDS, ABOUT 1,200 OF THOSE PEOPLE GIVE ADVICE. WE HAVE ESTIMATED THAT, UNDER THE CURRENT DEFINITION OF ADVICE CONTAINED WITHIN THE BILL, ABOUT 13,000 OF OUR BRANCH STAFF WILL NEED TO BE TRAINED TO THE LEVEL OF GIVING ADVICE, AND THAT THEIR ROUTINE DAILY ACTIVITIES WILL INVOLVE, IN MOST INSTANCES, GIVING ADVICE IN ORDER TO SELL PRODUCT.

ON THE COST SIDE OF THAT EQUATION, WE ESTIMATE THAT IT WILL COST US AROUND $7½ MILLION TO IMPLEMENT. THAT IS PURELY IN THE AREA OF TRAINING EXISTING EXPERIENCED OR FULLY TRAINED STAFF UP TO THE LEVEL OF ADVISERS. IT WILL COST BETWEEN $1½ MILLION AND $2 MILLION A YEAR TO MAINTAIN THAT LEVEL OF TRAINING, TO SAY NOTHING OF THE ROLLOVER OR THE INDUCTION PROCESS, FOR NEW STAFF. ON TOP OF THAT, THERE IS A SIGNIFICANT LEAD TIME INVOLVED IN TRAINING STAFF BEFORE THEY ARE ABLE TO COMMENCE DUTIES WITHIN BRANCHES. QUITE ASIDE FROM THOSE IS THE IMPACT ON THE REMAINING STAFF, WHOSE QUALITY OF JOB EXPERIENCE WILL BE SIGNIFICANTLY DESKILLED, GIVEN THAT MANY OF THE ACTIVITIES THAT THEY ARE NOW UNDERTAKING WILL NO LONGER BE UNDERTAKEN BY THOSE STAFF, AND THEY WILL BE CONSIGNED TO VERY ROUTINE ADMINISTRATIVE DUTIES.

THE DEFINITION OF 'ADVICE,' AS IT CURRENTLY STANDS, IS EVEN LIKELY TO CAPTURE INTERNET WEB SITES—FOR EXAMPLE, A WEB SITE WHICH IS DESIGNED TO PROVIDE TO ITS USERS A SELECTIVE LIST OF FINANCIAL PRODUCTS AND INFORMATION ABOUT THEM. IF THAT LIST OF PRODUCTS IS A VERY SELECTIVE ONE, THAT WOULD AMOUNT TO ADVICE UNDER THE CURRENT DEFINITION. WE WOULD SUBMIT THAT THESE ARE ALL UNINTENDED CONSEQUENCES. WE RECOMMEND THAT THE PROBLEM IS EASILY SOLVED BY REMOVING THE WORDS 'INTERPRETATION OF INFORMATION' FROM THE DEFINITION.

THE SECOND ASPECT OF THE DEFINITION WHICH IS PROBLEMATIC IS THAT IT REFERS TO PROCESSES WHICH ARE INTENDED TO INFLUENCE PERSONS IN MAKING A DECISION IN RELATION TO A PARTICULAR FINANCIAL PRODUCT. WE WOULD SUBMIT THAT EVERY SINGLE SALES PROCESS IS IN FACT INTENDED TO INFLUENCE A PERSON IN MAKING A DECISION; THEREFORE, THOSE WORDS DO NOT ACHIEVE THE OBJECTIVE THAT HAS BEEN AIMED AT IN THE WAY THAT THE DEFINITION OF 'ADVICE' HAS BEEN FRAMED.

A FOURTH AREA OF CONCERN RELATES TO THE REGULATION OF CONGLOMERATE GROUPS. THE COMMENTARY TO THE BILL STATES THAT THE OBJECTIVE IS TO ALLOW APPLICANTS FOR LICENCES TO STRUCTURE THEIR BUSINESSES IN WAYS THAT MEET THEIR COMMERCIAL OBJECTIVES. HOWEVER, WE DO NOT BELIEVE THAT THE OBJECTIVE OF A FLEXIBLE

REGIME HAS BEEN REFLECTED IN THE DRAFT PROVISIONS. WE NOTE THAT IN MOST FINANCIAL SERVICES CONGLOMERATES STAFF ARE EMPLOYED BY A SINGLE CORPORATE ENTITY WITHIN THE GROUP, USUALLY A SERVICE OR HOLDING COMPANY; HOWEVER, VARIOUS RELATED ENTITIES WITHIN THE GROUP WILL HOLD THE VARIOUS LICENCES REQUIRED TO PROVIDE FINANCIAL PRODUCTS AND SERVICES. USUALLY THESE RELATED ENTITIES DO NOT EMPLOY STAFF OF THEIR OWN; THEY EFFECTIVELY DISTRIBUTE THEIR PRODUCTS VIA EMPLOYEES OF THE HOLDING COMPANY WITHIN THE GROUP. AS SUCH, THIS MEANS THAT MOST CONGLOMERATES WILL NOT BE ABLE TO TAKE ADVANTAGE OF A FLEXIBLE APPROACH TO LICENSING SO WE RECOMMEND THAT THE BILL BE AMENDED TO EXPLICITLY RECOGNISE THE WAYS IN WHICH CORPORATE GROUPS ARE STRUCTURED TO ENSURE THAT FLEXIBILITY IS MAINTAINED. WITHOUT THIS IT WILL MEAN A CONSIDERABLE AMOUNT OF STRUCTURAL CHANGE, INCLUDING CANCELLATION OF LICENCES. THERE MAY BE ADVERSE CAPITAL GAINS TAX IMPLICATIONS, COSTLY FUNDAMENTAL STRUCTURAL CHANGES, OR, ALTERNATIVELY, ADMINISTRATIVELY COMPLEX LICENSING AND AUTHORISATION PROCESSES. WE SUBMIT THAT ALL OF THESE COULD BE FIXED BY EXPLICIT RECOGNITION OF CONGLOMERATES.

A FIFTH AREA OF CONCERN IS THE INCLUSION OF NON-CASH PAYMENTS IN THE REGIME. NON-CASH PAYMENTS, SUCH AS DIRECT DEBIT FACILITIES, CHEQUES, EFTPOS, SMART CARDS, TELEPHONE AND INTERNET BANKING, ARE NOT MADE FOR THE PURPOSES OF INVESTMENT AND THEREFORE SHOULD BE OUTSIDE THE SCOPE OF THIS LEGISLATION. NON-CASH PAYMENTS ARE WELL UNDERSTOOD BY CONSUMERS AND ARE FUNDAMENTALLY DIFFERENT IN NATURE FROM THE OTHER FACILITIES INCLUDED, AND IT IS UNNECESSARY AND INAPPROPRIATE TO SUBJECT THEM TO THE SAME LEVEL OF CONSUMER PROTECTION AS COMPLEX PRODUCTS SUCH AS SUPERANNUATION, INSURANCE AND MANAGED INVESTMENTS. TO DO SO WILL LEAD TO INEFFICIENT AND UNNECESSARY DISCLOSURE AND MAY STIFLE THE DEVELOPMENT OF EMERGING PAYMENT TECHNOLOGIES SUCH AS SMART CARDS. WE RECOMMEND REMOVING NON-CASH PAYMENTS FROM THE DEFINITION OF A FINANCIAL PRODUCT.

THE PROPOSED DISTINCTION BETWEEN RETAIL AND WHOLESALE CLIENTS HAS MOVED A LONG WAY SINCE THE INITIAL DISCUSSION PAPER AND THIS IS ENCOURAGING. HOWEVER, WE RECOMMEND THE INCLUSION OF THE EXISTING SPECIFIC PROFESSIONAL INVESTOR, DEALER CERTIFICATION AND OTHER EXEMPTIONS FROM THE DEFINITION OF 'RETAIL CLIENT' WHICH ARE FOUND WITHIN THE CORPORATIONS LAW AND REGULATIONS AT THE MOMENT.

Senator COONEY—Is this the sixth point?

Ms Goodman—I beg your pardon, this is the seventh point.

Senator COONEY—I have, 'Inclusion of non-cash payments'. What was that?

Ms Goodman—I am sorry; you are right. It was my sixth because I missed my fifth. I will come back to that. I am skimming over these ones. Obviously they are dealt with in much more detail in our submission, which we will drop straight down later. That makes my seventh point the express exclusion of credit. The commentary to the bill states that non-consumer credit will not be brought within the ambit of the bill. However, neither consumer nor non-consumer credit

is expressly excluded from the definition. This will lead to some unintended consequences—for example, where overdrafts are attached to a deposit product. Therefore, we would recommend that consumer and non-consumer credit be expressly excluded from the definition of 'financial product'.

I WOULD LIKE TO SPEND A BIT MORE TIME ON OUR EIGHTH POINT BUT I AM CONSCIOUS OF THE TIME. THE DISCLOSURE REGIME WILL LEAD TO AN OVERSUPPLY OF DISCLOSURE DOCUMENTATION. YOU WILL RECALL THAT ONE OF THE MAJOR CRITICISMS OF THE UNIFORM CONSUMER CREDIT CODE AFTER ITS IMPLEMENTATION WAS THE VOLUME OF DOCUMENTATION CONSUMERS WERE READING. THE GOAL THERE OF IMPROVING DISCLOSURE WAS OFTEN SAID NOT TO HAVE BEEN ACHIEVED BY THE FACT THAT THERE WAS SUCH A GREAT VOLUME OF DOCUMENTATION BEING PROVIDED. WE ARE CONCERNED THAT THE REGIME PROPOSED IN THIS BILL WILL LEAD TO A SIMILAR INUNDATION OF CONSUMERS WITH DOCUMENTATION. THERE ARE THREE DIFFERENT DOCUMENTS REQUIRED TO BE GIVEN TO CONSUMERS: THE FINANCIAL SERVICES GUIDE, FSD 1; PRODUCT DISCLOSURE STATEMENTS FOR EACH PRODUCT, FSD 2; AND THE STATEMENT OF ADVICE, FSD 3.

THERE ARE A NUMBER OF SITUATIONS WHICH TRIGGER THE OBLIGATION TO PROVIDE CUSTOMERS WITH ONE OR MORE OF THESE DOCUMENTS. WE WOULD SUBMIT THAT MANY OF THE TRIGGER POINTS ARE TOO EARLY IN THE INTERACTION WITH A CUSTOMER. THERE IS A REAL DANGER THAT CUSTOMERS WILL BE OVERLOADED WITH DISCLOSURE INFORMATION WHICH WILL LEAD TO INEFFECTIVE DISCLOSURE AND CONFUSION. IN ADDITION, THE REQUIREMENT TO NUMBER THE DOCUMENTS, 1, 2 AND 3 WILL LEAD TO CONFUSION IN ITSELF. IN THOSE INSTANCES WHERE CONSUMERS RECEIVE DOCUMENT 3 WITHOUT DOCUMENT 1 THEY WILL WONDER WHAT THEY ARE MISSING. WHILE WE APPLAUD AND STAND BEHIND THE GOVERNMENT'S DESIRE TO SEE CONSUMERS FULLY INFORMED, WE SUBMIT THAT SOME WORK IS STILL NEEDED ON THE DISCLOSURE REGIME SO THAT NOT ONLY IS IT EFFECTIVE FOR CONSUMERS BUT IT IS ADMINISTRATIVELY FLEXIBLE AND SIMPLE FOR FINANCIAL SERVICES GROUPS TO IMPLEMENT.

IN ADDITION, THERE ARE THE TRANSITIONAL ARRANGEMENTS FOR DISCLOSURE DOCUMENTATION. THERE ARE TRANSITIONAL ARRANGEMENTS FOR SOME OF THE DOCUMENTS BUT WE RECOMMEND THAT THERE ALSO BE INCLUDED AN APPROPRIATE TRANSITIONAL PERIOD FOR THE INTRODUCTION OF FINANCIAL SERVICES GUIDES AND STATEMENTS OF ADVICE. THE FINANCIAL SERVICES GUIDE IS A HIGH LEVEL-DOCUMENT DESIGNED TO INTRODUCE THE CONSUMER TO ALL THE SERVICES AND PRODUCTS ON OFFER BY A LICENSEE. YOU CAN APPRECIATE THAT IN A CONGLOMERATE OF ANY APPRECIABLE SIZE THAT IS A VERY COMPLEX DOCUMENT TO PUT TOGETHER AND TO KEEP UP-TO-DATE.

THERE ARE VARIOUS TRIGGER POINTS AT WHICH CONSUMERS ARE REQUIRED TO BE GIVEN A FRESH FINANCIAL SERVICES GUIDE. UNLESS THE REQUIREMENTS ARE GREATLY SIMPLIFIED, IT WILL MEAN IN PRACTICE A NEED TO ESSENTIALLY SEND ONE OF THESE GUIDES TO CONSUMERS ON A FAIRLY REGULAR BASIS, JUST IN CASE THERE HAVE BEEN ANY CHANGES SINCE THE LAST TIME THEY RECEIVED ONE. IT IS DIFFICULT IN THE TIME AVAILABLE TO GIVE YOU AN APPRECIATION OF THE DIMENSION OF THIS PARTICULAR PROBLEM. PERHAPS I HAVE SAID ENOUGH.

I MOVE ON TO OUR 10TH POINT WHICH IS THAT, WHILE THE BILL ONLY REQUIRES DISCLOSURE OF INFORMATION KNOWN IN PRODUCT DISCLOSURE STATEMENTS, IN PRACTICE THIS WILL NOT ALLEVIATE THE NEED TO UNDERTAKE A THOROUGH DUE DILIGENCE PROCESS. THE BILL PROPOSES NOT TO INCLUDE A DUE DILIGENCE DEFENCE AS CURRENTLY EXISTS UNDER THE CORPORATIONS LAW. HOWEVER, IN PRACTICE, A FORMAL AND IN-DEPTH DUE DILIGENCE PROCESS WILL BE REQUIRED WITHIN A CORPORATION TO IDENTIFY THE KNOWLEDGE OF THE RANGE OF PEOPLE WHO ARE REQUIRED TO PROVIDE IT. WE RECOMMEND THAT A DUE DILIGENCE DEFENCE BE INCLUDED. THOSE, AT A GALLOP, ARE OUR 10 MAJOR CONCERNS.

Mrs Lester—There are concerns about the specific provisions in the bill. I just add one additional one about process and our concerns about implementation date. With the extents of compliance arrangements that we would have to put in place, we would be recommending that the committee look at a recommendation that the implementation date be put back six months from the current mooted implementation date of 1 January next year.

CHAIRMAN—Thank you for that. Obviously, one of the concerns you have addressed is a concern that we have heard from others as well, which is this issue of counter staff and the definition of advice and the requirement to train front counter staff up to PS146. Can you outline for us particularly what impact that might have on services being able to be provided to rural and regional people if that is maintained in its present form? Are you concerned about this definition of advice and of personal advice and so on as to how it is currently framed? Do you believe it is appropriate to have that in the legislation or should this issue be left to the regulator to sort out? Could you generally enlarge on that issue?

Ms Goodman—The definition of 'advice' is a fundamental component of this range of reforms. In order to provide certainty for everybody, it is essential that it be in the legislation. However, it is also essential that there be enough clarity within that definition to enable the entire industry to understand what is required of them from the moment the bill leaves parliament as an act, so that implementation work can begin. We would suggest this would mean not leaving the definition open to interpretation and not leaving it open to further clarification by the Australian Securities and Investments Commission. Notwithstanding, we do find ASIC very commercial and pragmatic and responsive in all our dealings with them. It is inevitable that minor aspects of the regime will need to be left to regulation and policy statements issued by ASIC, but we would submit that this particular one, along with many others, is so fundamental that it should be addressed in the legislation itself. We have already commented on how it might be easily fixed.

Mrs Lester—As I have already mentioned to you, around 40 per cent of our outlets are in rural and regional areas. We have been looking to expand our services in rural and regional areas. For example, we have recently begun trialling the collection and provision of banking services for commercial customers through Australia Post agencies. The reason we have got 40 per cent of our access points in rural and regional areas is because many of those are provided via Australia Post, our own third party agencies where there is no Australia Post agency, or now through Woolworths Ezy Banking. If we were required to authorise the employees of all of those agencies, it would be very impractical—almost impossible, I would suggest—to continue offering the level of banking services that we are trying to provide for rural and regional customers.

Ms Goodman—To give you an idea of what might be involved: in order to train a staff member up to the level of an adviser, they need to be away in a training environment for a minimum of two weeks to learn about the economic environment, financial needs analysis and the whole range of things that enable an adviser to understand the economic background in order to understand an individual's financial circumstances. Much of that information is irrelevant to the activities that our staff currently carry out but will not be irrelevant if the definition of 'advice' stands as it is.

IN PRACTICAL TERMS, ENCOURAGING OUR REGIONAL AND RURAL PARTNERS WHO PROVIDE THESE SERVICES FOR US TO RELEASE THEIR STAFF FOR THAT LENGTH OF TIME, WITH ALL THE DISRUPTION TO THEIR EXISTING BUSINESSES THAT THAT ENTAILS, IS GOING TO BE VERY DIFFICULT. WHILE IN THEORY IT IS LAUDABLE TO HAVE TRAINING STANDARDS AND CONSISTENCY ACROSS THE INDUSTRY AND SO ON, IT NEEDS TO BE RECOGNISED THAT A DISTRIBUTION NETWORK THROUGHOUT RURAL AND REGIONAL AREAS RELIES VERY MUCH ON THE COOPERATION OF THE LOCAL BUSINESSES IN BEING AVAILABLE TO PROVIDE OUR PRODUCTS AND SERVICES. THERE IS A LIMIT TO THE EXTENT TO WHICH THEY WILL BE PREPARED TO COOPERATE IN THAT IF THE IMPACT AND DISRUPTION TO THEIR OWN BUSINESS IS TOO SIGNIFICANT.

Senator GIBSON—How many of those agency arrangements would you have throughout Australia?

Mrs Lester—We have 3,700 agencies. Around 400 of those—I will have to check those figures precisely—that are owned third party agencies. The situation becomes even more tricky then because they are small businesses. Indeed, many of them tell us that the reason why they are continuing to operate viably is through providing banking services, so it would not even be a matter of release. These are one-person small businesses situated in rural towns.

Senator GIBSON—We have had similar stories from building societies and credit unions.

CHAIRMAN—Have you made any estimate of the cost of complying with the legislation as it is currently drafted in this area of counter service?

Ms Goodman—We have estimated our costs in our branch network. The costs I quoted earlier did not include the costs in rural and regional areas; they were simply our own staff of about 17,000, of whom 13,000 would need to be trained to meet the new requirements. Overall the banking industry estimates that it is on a par with the implementation costs of the Uniform Consumer Credit Code, which were in the order of $100 million—there were some fairly high-level figures done.

Mrs Lester—I doubt that they would actually include the agency arrangements because the Commonwealth Bank is the most extensive.

Ms Goodman—That is true.

Senator COONEY—The only part you are upset about is the interpretation of information. The bank is content to have the definition of advice include recommendations and statements of opinion?

Ms Goodman—Yes, they clearly encompass advice. The advice process is essentially one where the customer relies on the opinion of the adviser.

Senator COONEY—I suppose 'interpretation of information' means the person would still be able to provide information, it is just the interpretation of that information that is caught. Why would that trouble you, I wonder?

Ms Goodman—Let us look in practice at the discussion that occurs with a customer around a term deposit. Term deposits are simple, well understood products. People come into banks to invest in term deposits for a variety of reasons. But because they are simple, well-known and well understood products, customers invariably have a very clear idea of why they want a term deposit. However, the conversation with a customer will inevitably involve a discussion about the range of term deposits on offer. There might be some debate about whether it would be better to invest in a cash management at call account. The more detail that enters into the conversation and the more products involved, the closer we get to an interpretation of information. In other words, as soon as the conversation strays away from simple provision of all information, then we are getting to a point where it is an interpretation of the available information. As soon as the customer service officer starts providing only some of the information available to the consumer, then it becomes almost immediately an interpretation of the information available.

I MUST SAY THAT, WHEN WE FIRST SAW THIS DEFINITION OF 'ADVICE', WE THOUGHT WE HAD PROBABLY PRETTY WELL SOLVED THE PROBLEM. IT WAS ONLY SUBSEQUENT DISCUSSIONS WITH OTHER INDUSTRY PLAYERS—AND IN PARTICULAR WITH ASIC, WHO SEE THE WORDS 'INTERPRETATION OF INFORMATION' AS ENCOMPASSING SUCH A DISCUSSION AS THE ONE I HAVE JUST MENTIONED TO YOU—THAT CAUSED US TO GO BACK AND HAVE ANOTHER LOOK AT THE DEFINITION. I THINK THAT ASIC ARE RIGHT: IT IS QUITE POSSIBLE TO INTERPRET THE CURRENT DEFINITION IN THE WAY THAT THEY ENVISAGE. AS SOON AS THE DISCUSSION INVOLVES ANY AMOUNT OF FILTERING OF INFORMATION AVAILABLE TO THE CONSUMER, THEN IT BECOMES ADVICE, BECAUSE THE CUSTOMER SERVICE OFFICER'S THOUGHT PROCESS IS TO FILTER OUT AND DECIDE WHAT INFORMATION IS REQUIRED FOR THE CONSUMER.

THAT IS NO DIFFERENT TO ANY SALES PROCESS. IF I GO INTO DAVID JONES TO BUY A WASHING MACHINE—UNLESS I AM PREPARED TO PERSONALLY UNDERSTAND EVERY SINGLE PIECE OF INFORMATION AVAILABLE ABOUT WASHING MACHINES—I DO, TO SOME EXTENT, RELY ON THE EXPERTISE OF THE SALESPERSON TO INTERPRET THAT INFORMATION FOR ME AND TELL ME WHAT IS RELEVANT TO THE DISCUSSION AT THE TIME. I DO NOT THINK ANYBODY CONTEMPLATES THAT KIND OF TRANSACTION AS EVER INVOLVING ADVICE BUT, OF NECESSITY, I PLACE SOME RELIANCE ON THE QUALITY OF THE SALESPERSON WITH WHOM I AM SPEAKING. I AM CERTAINLY CLEAR THAT I AM NOT OBTAINING ADVICE, HOWEVER. THAT IS WHERE THE WORDS 'INTERPRETATION OF INFORMATION' BECOME PROBLEMATIC, BECAUSE THEY CONTEMPLATE ANY SITUATION WHERE THE CUSTOMER SERVICE OFFICER IS IN SOME WAY FILTERING THE INFORMATION THAT IS AVAILABLE.

Senator COONEY—As Senator Gibson said—and this has come up again and again—the one thing the customer needs is information that is accurate so he or she can then exercise his or her judgment. You say if it is a recommendation then that is caught by it because that is

obviously going to affect the ability to make a rational judgment, so is a statement of opinion. But, taking your washing machine example, that is also going to be significant, isn't it? The customer is going to need to know if the person starts to go into the information of what is available or what is not available. They need to know that very issue, don't they?

Ms Goodman—Yes, but the crucial difference is that the customer well understands that at the end of the day it is their own decision. They are not relying, in a fiduciary sense, on the judgment of the customer service officer. That is the crucial distinction, that in an advice process there is a fiduciary reliance on the expertise and recommendations of the adviser. The adviser is trained to understand investment concepts, taxation, estate planning, risk profiles, identification of risk, the economic environment, and how various complex products work within that. In the context of that training, the adviser obtains from the client a very detailed understanding of their financial circumstances, their investment horizons, their risk appetite, their estate planning and all of their views about their financial affairs. Having obtained that information, the adviser applies their expert knowledge to come up with recommendations about very complex investments products. That is the essence of the advice process. The customer well understands that they are relying on that expertise, relying on the analysis of the extensive financial information which has been provided and that the recommendations provided take all of those things into account. It is the reliance—the fiduciary aspect of the relationship—which is fundamentally different.

Senator COONEY—As you say, it is the fiduciary nature of the discussion that counts, not the matter of making sure that all information is available.

Ms Goodman—That is right. It is the customer's reliance on the advice given by the adviser, the fiduciary aspect. Therefore, the adviser is under various legal obligations, as indeed the licensee is to ensure that the advisers are appropriately trained, that recommendations are fair and that recommendations are in the best interests of the customer. Sometimes that means making no recommendations at all. All these things are encompassed within the advice process, but fundamentally customers understand and recognise the difference between that process and an ordinary sales process.

Senator COONEY—The trouble is that, once the person who is talking to the customer starts to say, 'We have this product and that product available,' and, as you say, overlooks another one, isn't he or she putting forward information that is going to be relied upon by the customer? You say it is not going to be relied upon by the customer in a fiduciary way; nevertheless, it is going to be relied upon by the customer.

Ms Goodman—Of course, regardless of the process, all salespeople need to be telling the truth and they need to be providing information which is not misleading. That is dealt with by Trade Practices Act provisions, and we are all under onerous obligations to make sure that information is not false or misleading in any way. It is the element of reliance and, indeed, the fact that a recommendation is made at all—'Having assessed all of your circumstances, Mr Consumer, I recommend that you take this particular product, this particular term deposit for this length of time, that you take this particular risk insurance product, that you invest in this managed fund over this investment horizon.' It is the reliance on the fact that at the end of the discussion there are specific recommendations about what the consumer should do that is the fundamental distinction between that and a normal sales process.

WE UNDERSTAND THAT VERY WELL. IF YOU GO INTO ONE OF OUR BRANCHES AND TRY TO GET ONE OF OUR STAFF TO GIVE YOU ADVICE, YOU WILL FIND IT VERY DIFFICULT, BECAUSE THEY ARE WELL TRAINED TO UNDERSTAND THE DIFFERENCE BETWEEN SALES AND ADVICE. INDEED, SO ARE OUR CUSTOMERS—THEY RECOGNISE THE DIFFERENCE AS WELL. WHAT WE ARE CONCERNED ABOUT IS THAT ALL THOSE CUSTOMERS WHO CURRENTLY COME IN TO BUY THINGS FROM US WILL NOW BE FORCED TO GO THROUGH A LENGTHY ADVICE PROCESS WHICH IS NOT WHAT THEY WANT. THEY WILL BE ANNOYED AND THEY WILL BE FRUSTRATED. IT WILL NOT HELP US FOR US TO BE SAYING, 'WE ARE REQUIRED BY LEGISLATION TO DO THIS.' THEY WILL LOOK AT US AS IF WE ARE SILLY.

Senator GIBSON—This morning we had Lynn Ralph from IPSA canvassing this very problem. She came to the conclusion, obviously from experience within her organisation and given her experience of being with ASC previously, that to define 'advice' was virtually impossible, and was therefore making a recommendation that it be left for ASIC to interpret and that it should be flexible, particularly as this proposed law is implemented. Her view was that it was a very difficult area to define precisely.

Ms Goodman—Doesn't that just postpone the discussion for another day?

Senator GIBSON—I do not know about that. Just remember that this bill and these issues have been around for quite a long time. The industry is pushing the parliament and the government to get on and do it. There have been rounds of discussion, and most people in the industry want us to get on and implement the bill—sure, with a few modifications—but we have not had agreement on this particular issue and it would seem that the recommendation from the great bulk of people in the industry is to get on with it and to fix that up over time, over the first couple of years or so as it is being implemented. That would seem to be a more pragmatic and sensible view than having further rounds of trying to define precisely the wording to get around this particular problem.

Mrs Lester—It would leave to a great deal of uncertainty, though, wouldn't it, until that was actually clarified?

Senator GIBSON—Sure, I understand that.

Mrs Lester—Particularly with the number of staff that we have.

Senator GIBSON—The committee is well aware of your problem. I think we all agree that it is a difficult problem and that something has to be done about your particular issue—the building societies, the credit unions, et cetera. We know it is something that has to be fixed up, but precisely how to fix it up is the question.

Mrs Lester—I suppose it might depend on what ASIC would do.

Senator GIBSON—That is right.

Mrs Lester—If they would issue guidelines that could then be finessed over two years, that would be a lot more attractive to us than if they were simply to wait and test the case.

Senator GIBSON—I think that is what IFSA were recommending.

Ms Goodman—In fact all the major aspects of the bill depend upon the definition of 'advice' for their certainty as well. So, in applying for a licence, an applicant will need to know whether or not they seek to give advice in order to ensure that their licence enables them to give advice. The disclosure regime revolves to a large extent around whether or not advice is being given in relation to certain products, and the aspect of implementation which always has the most lead time is training and educating staff.

CHAIRMAN—Are you aware of the holding out provision that applies in Canada?

Ms Goodman—Yes.

CHAIRMAN—Would that be relevant in solving this problem?

Ms Goodman—It is quite an interesting approach because, as I recall, it depends upon the way in which the adviser classifies themselves. So if I call myself an adviser, people are entitled to rely on that. I might add that the bill has come a long way since the first discussion paper came out. I think everybody feels that, bar a couple of remaining things such as this, the process has been very encouraging. At some point there was a feeling that there would be significant problems in matching the way that Canada had implemented its regime with the way our industry is structured here. But the concept itself is quite a simple and an appealing one. There can be no better measure of whether one should be held to be an adviser than the fact that one is holding oneself out as one. But I do not know that it fixes this problem, because we still need to know what it means to give advice in order to know whether or not we are holding ourselves out as an adviser.

I AM OBVIOUSLY NOT PRIVY TO THE DISCUSSIONS YOU HAVE HAD WITH OTHER BODIES, BUT I WONDER WHETHER OR NOT SOME THEMES ARE COMING THROUGH. THE ONLY OTHER ASPECT OF THE DEFINITION WHICH IS A LITTLE PROBLEMATIC—AND I THINK SOME INDUSTRY PLAYERS HAVE PICKED UP ON IT AS WELL—IS THAT IT IS A FAIRLY SUBJECTIVE TEST AT THE MOMENT. TO SOME EXTENT IT RELIES ON THE PERCEPTION OF THE CONSUMER, AND THERE MAY WELL BE SOME BENEFIT IN MAKING THE DEFINITION MORE OBJECTIVE IN ITS DETERMINATION.

Senator GIBSON—Are you aware that the submissions to us are available on the public record and that the transcript of our hearings will be available on the public record?

Mrs Lester—Yes.

CHAIRMAN—You will be able to see what others have said.

Senator COONEY—I will move to a different issue and your first point about the licensing requirement overlapping with APRA. A similar sort of issue has been raised by the Association of Superannuation Funds of Australia. What do you say about that? Would it be better to have these requirements in the one act? Do you mind the regulations being spread over legislation? What is your position about that? You say that with the licensing, there is this overlap with APRA. What would you do about that?

Ms Goodman—They do not need to be in the one piece of legislation. So long as the outcome is achieved, which is no overlap, it does not matter how many pieces of legislation they are found in. There are hundreds of them that apply anyway and we need to be cognisant of them all. Under the proposal, APRA regulated bodies not only will need to meet APRA's requirements but will have additional requirements placed upon them by ASIC, which in some cases will be overlapping and in some will not be. It increases the complexity, both administratively and from a client's perspective, to have two different licences with overlapping and duplicating requirements, bearing in mind that the licensing regime is intended to ensure that consumers are able to deal with reputable and stable institutions to the extent that APRA is ensuring stability and good corporate practice. To that extent, there should be no need for additional requirements.

Senator COONEY—You do not see any problem with consumers if they have to go over several acts, or even a couple of acts, to see what their rights are or what their obligations are?

Ms Goodman—I think that remains a problem, given the level of regulation across the industry. There are some 400 acts that apply across our group, so having one or two more, from a consumer's perspective, is probably not reducing the complexity. ASIC in particular has done very good work in issuing plain English guides for consumers about their rights, and I believe that work should continue because increasingly consumers turn to regulators for an understanding of their rights. The ACCC has also done some very good work in that regard.

CHAIRMAN—There being no further questions, thank you Ms Lester and Ms Goodman for appearing before the committee this afternoon.

Proceedings suspended from 1.08 p.m. to 1.45 p.m.

BREAKSPEAR, Mr Ken, Acting Chief Executive Officer, Financial Planning Association of Australia

GRIFFIN, Mr Raymond John, Chairman, Financial Planning Association of Australia

HRISTODOULIDIS, Mr Con, Senior Manager, Public Policy, Financial Planning Association of Australia

CHAIRMAN—I call the committee to order and welcome the representatives of the Financial Planning Association of Australia Ltd. We have before us your submission, which we have numbered 18. Do you wish to make an opening statement in relation to the submission?

Mr Griffin—Yes.

CHAIRMAN—If so, please proceed and then we will move to questions.

Mr Griffin—Thank you. The Financial Planning Association of Australia is the peak professional organisation for the financial planning industry in Australia. We have over 12,000 members who are associated with a network of 31 chapters across Australia, and we have a state office in each capital city. The FPA is the only organisation that fully represents qualified financial planners and their principal licensed dealers.

FPA MEMBERS ADVISE ON AND/OR MANAGE THE FINANCIAL AFFAIRS OF ALMOST FIVE MILLION AUSTRALIANS WITH AN INVESTMENT VALUE OF $156 BILLION. THE FPA HAS BEEN EXTENSIVELY INVOLVED WITH, AND IS A SUPPORTER OF, THE DRAFT FINANCIAL SERVICES REFORM BILL. THE FPA WAS ONE OF THE FIRST ASSOCIATIONS TO RECOMMEND THE INTRODUCTION OF THE UNIFORM REGULATION OF ALL FINANCIAL PRODUCTS AND A SINGLE LICENSING REGIME FOR FINANCIAL SERVICES PROVIDERS. INDEED, ON THAT POINT, WE WERE VERY MUCH A PART OF THE WALLIS INQUIRY AND WERE FUNDAMENTALLY QUITE HAPPY WITH THE OVERALL THRUST OF THE WALLIS REPORT. WE HAVE SOME CONCERNS, WHICH WE WILL OUTLINE FOR YOU SHORTLY.

WE ALSO PROPOSED AND WELCOMED THE UNIVERSAL STANDARDS OF CONDUCT AND UNIFORM DISCLOSURE OBLIGATIONS FOR ALL FINANCIAL SERVICE PROVIDERS DEALING WITH RETAIL CLIENTS. SUCH A REGULATORY REGIME PROMOTES COMPETITIVE NEUTRALITY, CLEAR OPERATING STANDARDS, AND ACCOUNTABILITIES FOR CONDUCT AND CONSISTENT AND COMPARABLE FINANCIAL PRODUCT INFORMATION. IN TURN, THIS PROMOTES A HIGH LEVEL OF INFORMED DECISION MAKING BY RETAIL CLIENTS. FOR THESE REASONS, EXEMPTIONS OR EXCEPTIONS TO THE CORE PRINCIPLES MUST BE SOLIDLY JUSTIFIED AND ONLY COMPROMISE ON A CLEAR COST BENEFIT ANALYSIS.

INDEED, ON THIS GROUND, WE BELIEVE THAT THE PROPOSAL TO INTRODUCE A DECLARED PROFESSIONAL BODY EXEMPTION FROM THE UNIVERSAL LICENSING REGIME IS OF GREAT CONCERN TO US. WE BELIEVE THAT SUCH AN EXEMPTION WOULD UNDERMINE COMPETITIVE NEUTRALITY AND DELIVER A LOWER LEVEL OF CONSUMER PROTECTION. THE SAME COMPETENCY AND

CONDUCT STANDARDS FOR FINANCIAL SERVICES LICENSEES SHOULD BE STRICTLY APPLIED TO ALL PROFESSIONAL ADVISERS WHO WISH TO PROVIDE RETAIL FINANCIAL PRODUCT ADVICE. WE NOTE THAT THE CONCEPT OF A SELF-REGULATORY ORGANISATION WAS RAISED IN THE FINANCIAL SYSTEM INQUIRY REPORT. HOWEVER, THE CONSENSUS IN THE SUBMISSIONS MADE TO THAT INQUIRY WAS THAT THE PRIMARY GATEKEEPER/LICENSING ROLE WAS BEST UNDERTAKEN BY THE REGULATOR.

FURTHER, THE PREVIOUS POSITION AND CONSULTATIVE PAPER GAVE NO INDICATION THAT THE GOVERNMENT WAS CONSIDERING THE INTRODUCTION OF A DECLARED PROFESSIONAL BODY MECHANISM. WE BELIEVE THAT THE DPB PROVISION PROVIDES FOR A SOFT REGISTRATION WITH LOWER THRESHOLDS, STANDARDS OF ENTRY AND CONDUCT COMPARED WITH THE FULL LICENSING REQUIREMENTS. INDEED, THESE ARE OUTLINED IN OUR SUBMISSION AND WE ARE HAPPY TO EXPLORE THESE FURTHER WITH THE COMMITTEE TODAY.

QUITE SIMPLY, THE DPB PROVISION IS NOT IN THE INTERESTS OF SIMPLICITY AND CONSUMER PROTECTION. OVER THE LAST EIGHT YEARS, THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION AND ITS PREDECESSOR, THE ASC, HAVE ACCURATELY PROMOTED A DOCUMENT CALLED 'DON'T KISS YOUR MONEY GOODBYE'. IT IS SOMETHING WHICH TENS OF THOUSANDS OF AUSTRALIAN CONSUMERS HAVE USED IN THE PROCESS OF HOW TO SELECT A FINANCIAL PLANNER. INDEED, IT IS UNDER THE PROCESS IN WHICH LICENSEES ARE ESTABLISHED THROUGH THE CORPORATIONS LAW AS IT CURRENTLY EXISTS THAT 'DON'T KISS YOUR MONEY GOODBYE' HAS BEEN PREPARED. WE HAVE FOUND THAT IT HAS BEEN A MOST USEFUL DOCUMENT IN HELPING TO EDUCATE THE AUSTRALIAN CONSUMER. WE KNOW THAT IT HAS BEEN SUCCESSFUL BECAUSE WE NOW KNOW FROM OUR OWN RESEARCH THAT ABOUT 36 PER CENT OF AUSTRALIANS WOULD SEEK THE SERVICES OF A FINANCIAL PLANNER WHEN LOOKING FOR FINANCIAL ADVICE. THAT IS THE HIGHEST RESPONSE RATE OF ANY CATEGORY WHICH THE SURVEY PARTICIPANT COULD CONSIDER. WE KNOW THAT DOCUMENTS LIKE THESE AND THE GREAT WORK THAT ASIC HAS PUT INTO THIS PROCESS COULD WELL BE UNDERMINED IF THERE IS A SECOND WAY IN WHICH SOMEONE COULD BECOME LICENSED TO GIVE FINANCIAL PLANNING ADVICE.

WE HAVE CONCERNS ABOUT THE FACT THAT THE PROPOSAL TALKS ABOUT INDIVIDUALS BEING ADEQUATELY TRAINED. WE THINK THAT THIS IS A SIGNIFICANT SEPARATION FROM THE REQUIREMENT UNDER THE CURRENT LICENSING REGIME WHICH REQUIRES A DEGREE OR SPECIALIST TRAINING AND AT LEAST THREE YEARS OF INDUSTRY EXPERIENCE—INDEED, WE THINK THAT IT IS VERY MUCH ADRIFT OF ASIC'S POLICY STATEMENT NO. 138. WE THINK THAT THERE IS NO CONSENSUS OR CONSISTENCY WITH THAT PARTICULAR DOCUMENT.

FROM A PRACTICAL SENSE, WE HAVE CONCERNS ABOUT HOW ASIC CAN ADMINISTER THIS PROPOSAL. IN REAL TERMS IF, FOR EXAMPLE, ONE OF THE ACCOUNTING BODIES OR, INDEED, A STATE LAW SOCIETY WAS TO BE GIVEN A LICENCE AS A DECLARED PROFESSIONAL BODY, I FIND IT VERY DIFFICULT TO IMAGINE THAT ASIC WILL, IN FACT, TAKE AWAY A LICENCE FROM ONE OF THOSE BODIES. HOW COULD THEY ADMINISTER SYSTEMIC PROBLEMS OR BREACHES OF CONDUCT WITHIN THAT SORT OF ORGANISATION? IT IS DIFFICULT ENOUGH FOR ASIC IN THE CURRENT ENVIRONMENT TO BE TAKING AWAY LICENCES UNDER THE CORPORATIONS LAW, LET ALONE WHERE THERE IS A WHOLE ORGANISATION BEING GIVEN A BLANKET TYPE LICENCE

COVERING MANY TENS OF THOUSANDS OF MEMBERS. I THINK THAT THERE ARE SOME DIFFICULTIES THERE FROM ASIC'S POINT OF VIEW. WE KNOW, ANECDOTALLY FROM OUR DISCUSSIONS WITH ASIC, THAT THEY HAVE CONCERNS ABOUT WHETHER OR NOT THEY WILL BE ABLE TO ACTUALLY ADMINISTER THIS EFFECTIVELY. ALL OF THIS LEADS TO AN UNDERMINING OF CONSUMER PROTECTION AND IT IS IN CONTRAST TO THE TREND OF LEGISLATION OVER THE LAST DECADE OR SO WHICH HAS BEEN AIMED VERY MUCH AT THE CONSUMER PERSPECTIVE.

ON ANOTHER MATTER, THE FPA STRONGLY SUPPORTS THE INCLUSION OF NON-CONSUMER CREDIT, INCLUDING MORTGAGE FINANCE AND INVESTMENT LOANS, COMING WITHIN THE DEFINITION OF A FINANCIAL PRODUCT. WE TALK TO MANY FINANCIAL PLANNERS AND PARTICULARLY MANY OF OUR MEMBERS. THEY WILL ALL HAVE SOME SORT OF WAR STORY FOR YOU ABOUT DEALING WITH PEOPLE WHO HAVE COME TO THEM WHO HAVE BEEN THE VICTIMS—IF I CAN PUT IT IN THOSE TERMS—OF FINANCIAL ADVICE TO NEGATIVELY GEAR INTO PROPERTY. I AM SURE THAT WE ARE ALL AWARE OF THE SOUTH-EAST QUEENSLAND SORT OF EFFECT WHERE AN OVERINFLATED VALUE IS PUT ON A PARTICULAR PROPERTY AND SOMEONE IS ENCOURAGED TO NEGATIVELY GEAR INTO THAT PARTICULAR BUILDING AND, ALL OF A SUDDEN, THEY FIND THEMSELVES WITH AN INDEPENDENT VALUATION WITH A SUBSTANTIALLY LOWER VALUE THAN WHAT THEY HAVE PAID FOR THE BUILDING. WE THINK THIS IS OF GREAT CONCERN. I MUST SAY, FROM A REAL ESTATE POINT OF VIEW, WE DO NOT HAVE A PROBLEM WITH THE FACT THAT THE TYPICAL SUBURBAN OR REGIONAL REAL ESTATE BUSINESS IS OUT THERE DOING A GOOD JOB, RUNNING A RENTAL ROLE AND SELLING PROPERTY TO CONSUMERS. WE HAVE A CONCERN WHEN THERE IS THIS TRANSGRESSION ACROSS THE LINE: WHERE DOES FINANCIAL ADVICE START AND END IN TERMS OF PROPERTY?

WE ARE DISAPPOINTED AT THE PROPOSED DEFERRAL OF THIS INCLUSION PENDING THE REVIEW OF UNIFORM CONSUMER CREDIT CODE. THIS MEANS THAT THE IMPORTANT FUNDING SIDE OF AN INVESTMENT PROPOSAL ESCAPES SCRUTINY, SUCH AS WHERE ADVICE IS GIVEN ON NEGATIVE GEARING RELATING TO INVESTMENTS IN SHARES OR IN PROPERTY. WE BELIEVE THAT INVESTORS IN PROPERTY ARE ENTITLED TO RECEIVE THE SAME LEVEL OF CONSUMER PROTECTION IN DEALING WITH THESE COMPLEX AND SIGNIFICANT INVESTMENTS AS IF THEY WERE BUYING OTHER FINANCIAL PRODUCTS. INDEED, IN AN ASIC REPORT RELEASED IN JULY LAST YEAR, ASIC RECOMMENDED REGULATION OF REAL ESTATE AGENTS WHO ARE GIVING FINANCIAL ADVICE. WE NOTE THAT THIS NEEDS COOPERATION BETWEEN THE STATES AND THE FEDERAL GOVERNMENT, OR THE FEDERALS, AND THAT WOULD GET US A LONG WAY DOWN THE TRACK TO IMPROVING PROTECTION FOR THE CONSUMER IF THAT COULD BE ACTED UPON AS PER ASIC'S RECOMMENDATIONS.

FINALLY, WE BELIEVE THERE SHOULD BE A LEVEL PLAYING FIELD FOR DISCLOSURE OF BENEFITS AND ADVANTAGES COVERING ALL DISTRIBUTION CHANNELS, NO MATTER WHAT SORT OF ADVICE OR CONTEXT IS GIVEN OR TECHNOLOGY ADOPTED. PARAGRAPH A13 OF ATTACHMENT A PROPOSES TO SPLIT COMMISSION INTO TWO SEPARATE COMPONENTS—BEING THE AMOUNT PAID BY A PRODUCT ISSUER FOR PERFORMING BACK-OFFICE FUNCTIONS THAT WOULD OTHERWISE BE PERFORMED BY THE PRODUCT ISSUER AND THE AMOUNT RELATING TO THE SALES PROCESS OR ADVICE GIVING. OUR ORGANISATION IS FUNDAMENTALLY COMMITTED TO THE FULL DISCLOSURE OF ALL FEES AND COMMISSIONS. WE THINK THAT FULL AND FRANK

DISCLOSURE UNDERPINS THE TRUST THAT SHOULD BE PRESENT IN THE CLIENT AND FINANCIAL PLANNER RELATIONSHIP. WE ACTUALLY GO TO THE POINT OF INSISTING THAT OUR MEMBERS, AS PER OUR CODE OF ETHICS AND RULES OF PROFESSIONAL CONDUCT, FULLY DISCLOSE ALL SUCH COMMISSIONS AND FEES IN WRITING NOT ONLY IN PERCENTAGES BUT ALSO IN DOLLAR TERMS. WE BELIEVE THAT A CLIENT HAS A RIGHT TO KNOW WHAT ALL CHARGES ARE AND TO WHOM THESE CHARGES ARE BEING PAID TO.

FUNDAMENTALLY, WE THINK THE TRANSPARENCY OF ALL COSTS AND FEES BUILDS TRUST WITHIN THE COMMUNITY OF THE FINANCIAL PLANNING PROCESS. WE ARE CONCERNED THAT THIS INTERPRETATION OF 'COMMISSION' DOES NOT OPEN UP A LOOPHOLE WHEREBY BACK-OFFICE CHARGES ARE LOADED UP TO AVOID DISCLOSURE TO CONSUMERS. WE ARE CONCERNED THAT THERE COULD BE PROVISION WHERE THERE IS A MASSAGING OF WHERE THE FEES ARE ACTUALLY INCURRED AND WHERE THEY ARE BEING APPLIED, AND WE THINK THIS IS NOT IN THE BEST INTEREST OF THE CONSUMER IN TERMS OF HAVING A FULL UNDERSTANDING OF WHAT THE CHARGES ARE. WE ARE COMMITTED TO THE UNIVERSAL DISCLOSURE OF COMMISSIONS AND BENEFITS FOR ALL FINANCIAL PRODUCTS, INCLUDING LIFE INSURANCE, SUPERANNUATION RISK, BORROWINGS AND REAL PROPERTY. FOR EXAMPLE, OUR PRACTICE GUIDELINE ON DISCLOSURE OF FEES AND COMMISSIONS DETAILS UNDER RULE 106 OUR PROCESS OF DEALING WITH SUCH REQUIREMENTS OF OUR MEMBERS.

IN SUMMARY, WE HAVE GREAT CONCERNS AS TO THE PRACTICAL APPLICATION OF THE DECLARED PROFESSIONAL BODY PROPOSAL. MORE IMPORTANTLY, THOUGH, WE ARE VERY MUCH CONCERNED ABOUT HOW THIS CAN PROTECT THE CONSUMER GOING FORWARD. WE ARE CONCERNED ABOUT FULL DISCLOSURE AND TRANSPARENCY OF ALL FEES AND COMMISSIONS SO THAT THE CLIENT CAN MAKE AN INFORMED DECISION ABOUT THE IMPACT OF SUCH FEES AND COMMISSIONS ON THE ADVICE THAT HAS BEEN GIVEN. HAVING SAID THAT, WE ARE FULLY COMMITTED TO THE SINGLE LICENSING REGIME AND WE WILL PLAY AN ACTIVE ROLE AS A PROFESSIONAL BODY IN SETTING INDUSTRY BEST PRACTICE STANDARDS. THANK VERY MUCH FOR THE OPPORTUNITY TO PRESENT OUR SUBMISSION TO YOU. WE ARE HAPPY TO TAKE WHAT QUESTIONS WE CAN.

CHAIRMAN—Thanks, Mr Griffin, for your opening statement. The issue that seems to be of most concern to the range of witnesses we have heard, and particularly to banks and building societies, is this problem of the definition of 'advice'. Their view is that the current definition will catch counter staff, bank tellers and those sorts of people, who will be caught up in the requirement to be trained up to the 146 standard requirement. Do you share that concern and should there be some change to the draft legislation to avoid the potential problem they foresee, particularly with country agencies and pharmacies and so on representing banks and building societies and all of the attendant problems that might cause?

Mr Griffin—We fundamentally support IPS 146. We think it is a very good proposal and we think that it starts to put in place minimum competency requirements for those who are giving advice. Where this gets a little bit confusing is: are we talking about a bank teller or a bank inquiries clerk talking about a term deposit or are we talking about discussing a savings plan with a managed fund? That is where it gets confusing and difficult for them.

Mr Breakspear—In our submission, on page 4 and 5, we did make some comments about the meaning of financial product advice. From our perspective, we are looking at it from a

consumer's perspective and their entitlement to receive properly considered advice when they are relying upon the kinds of statements that are coming across from the provider. We know that there can be some fuzzy areas of difference between giving advice and making a recommendation. Our view would be that if someone is saying, 'This product is good for you,' they are making a recommendation and that should be substantiated by an understanding of that client's position.

WE ARE NOT SAYING THAT IN EVERY SITUATION WHERE SOMEONE MAKES A POSITIVE RECOMMENDATION TO A PERSON THEY MUST UNDERTAKE AN HOUR-LONG INVESTIGATION OF THEIR CLIENT'S NEEDS AND CIRCUMSTANCES. THE INQUIRY SHOULD BE APPROPRIATE TO THE PERSON'S SITUATION. NEVERTHELESS, THERE SHOULD BE AN INQUIRY ABOUT THE APPROPRIATENESS OF THAT RECOMMENDATION, OTHERWISE THAT CONSUMER IS RELYING UPON SOMEBODY'S ADVICE AND THAT PARTICULAR INVESTMENT MAY NOT BE APPROPRIATE FOR THEM.

Mr Griffin—Section 851 of the Corporations Law, which we generically call the 'know your client rule', places an onus on the person who is giving the advice to have an understanding of that person's requirements and objectives. That is fundamentally at issue with the process which we go about in terms of expecting our members to adhere to that requirement. Indeed, the law requires it in any case. It is really important that the consumers' objectives and requirements and their awareness of different types of risks be gathered in before making a recommendation.

Senator GIBSON—We had the Commonwealth Bank in just before lunch with 3,700 agencies around Australia, last week we had the building societies and this morning we had credit unions, all raising this problem of the 'bank teller' or, at lower level again, the 'agent'—the pharmacist or newsagent acting as the agent for just taking deposits and paying out cash in country towns. This morning we also had Lynn Ralph of IFSA basically saying that, after due consideration and given her background with the securities commission, they could not come up with a satisfactory definition to get around this problem of advice and, in fact, recommending leaving it to ASIC to do it with policy statements over a year or two—hopefully getting around it that way. On the other hand, you have recommended some wording as an amendment as to 766B:

a reasonable person in the circumstances would have expected the provider to have considered these matters

Have you floated that option with any of these other people?

Mr Breakspear—We have talked to IFSA about this. I am not sure whether they have changed their view over time, but at the time we talked to them that was an agreement that we made—that the reasonable person test is an objective test, as against the subjective test of what each individual thinks. We thought that that provided a little more objectivity and reduced the exposure. It is more containable.

Senator COONEY—Who judges what is reasonable? How does it become 'objective' when the person is working out what is reasonable?

Mr Breakspear—A court at the end will determine what is reasonable. The problem is there is no halfway house; either you provide information or you give advice. Once you move into the

advice mode, you have a number of responsibilities to take account of that person's individual circumstances. However, the degree to which you inquire is relative to the seriousness of the decision or the kind of product that you have. As a matter of policy, one could determine that if you are dealing with very simple products that have very little transaction costs like a bank deposit—it is in and out, there is no cost to it—you can adjust yourself. The more serious the product or the more investment oriented the product, the further you may need to inquire as to its appropriateness. The way ahead may well be, as a matter of policy, that the more complex and the more important the product, then perhaps the more duty of care to inquire.

Mr Griffin—It could be argued that recommending a term deposit for someone is inappropriate, because if they have long-term capital growth objectives then a term deposit, which is subject to the full impact of tax and lacks capital growth potential is inappropriate. By the same token, for somebody who is investing to save a deposit on a house or buy a car, for example, a managed savings plan which has got 60 per cent Australian shares and 30 per cent in international shares may well be inappropriate for them if the markets happen to be unkind to them just before they need that money. See the difference?

Senator GIBSON—Yes.

Mr Griffin—It is a matter of where you perceive risk. This is why we think it is beholden upon the individual to ascertain what the client's requirements are. There may be some sort of simplified approach to it which differs from someone coming into my business and sitting down with me and my staff with a detailed questionnaire, which will take an hour to an hour and half to go through. There may be a shortened process for a retail situation or an over-the-counter situation, but fundamentally underpinning that will be: what are the client's requirements? It may well be that, once those initial requirements are ascertained, it is recommended that the person go to see someone within the bank to get a more detailed recommendation on their situation.

Senator GIBSON—But if a customer is just coming into a little pharmacy agency out in Woop Woop somewhere and is just putting in cash deposits or taking some out, he does not need this sort of paraphernalia.

Mr Griffin—Exactly.

Mr Hristodoulidis—My experience with the banking industry is that, if you go into a bank now and you see a teller and it is for a straight out deposit or you are making a payment on a credit card, the tellers are instructed to ask if you need extra services. If you answer yes to any of those questions, they refer you to a specialist in the bank. We would be saying that the training needs to come into effect there, not at the teller stage.

Mr Griffin—We would also argue that, in the case of someone coming to an agent, that agent is representing the bank or whatever the particular financial services organisation is. That person bears the same responsibility, effectively, as someone who is actually at the coalface of that financial services organisation, be it a bank branch or a head office type situation. They bear the same responsibility.

Senator COONEY—The Commonwealth Bank do these things. They said that there ought to be responsibility where there is a fiduciary duty, but not otherwise. That is fairly narrow in terms of what you have been saying. Would you say that was a fairly narrow distinction? In other words, the responsibility comes upon the bank only when the fiduciary duty arises. You would know, Mr Hristodoulidis, what the fiduciary duty entails and when it arises. Would you say that is too narrow?

Mr Griffin—I would actually come back to Ken's point: where does the difference start between providing information and advice? Once you are starting to give advice, you have a fiduciary duty, and the duty of care to the client is where that comes in.

Senator COONEY—They were concerned about the third definition and 'interpretation of information'. They said that should not be in the definition. What do you say about that?

Mr Breakspear—On 'interpretation of information', if you are just explaining a product and how it works, that seems to me to be a neutral exercise. Once you are moving in to make a positive statement that it is appropriate for a person—'It's good for you.'—that is the trigger point. When we were looking at it, I am not sure if we focussed on the exact words of 'interpretation of information'. But the trigger points are, it seems to me, reliance—when you are relying upon that person's statement—and when the person is making a positive stance, 'This particular product is appropriate to you.' Those two things seem to run together. I am happy to go back and have a look at 'interpretation of information' and make another submission on it.

Senator GIBSON—Changing topics, you are for full disclosure for basically all risk products. I note from your list that you did not include general insurance.

Mr Griffin—Rule 106 of our code of ethics and rules of professional conduct requires disclosure on that as well.

Senator GIBSON—Oh, does it?

Mr Griffin—Yes, it definitely does.

Mr Breakspear—We do not differentiate between a product. What we are saying is that, as a professional adviser, you come with open hands to whomever you are dealing with and tell them whatever benefits you are going to receive from that particular transaction or advice.

Senator GIBSON—We have had evidence from others about general insurance products whereby it is very difficult to define the costs, either of commission or promotion, and that the consumer would really like to know what the overall cost of administration of general insurance products is. Because of the wide range of components of those, they were making recommendations to us that full disclosure of just agent's commission can be misleading, as opposed to, say, someone working in a bank on salary plus bonus. Is the bonus disclosed? No.

Mr Griffin—We require it to be disclosed. We require our members, particularly bank employees, to disclose that to the consumer because, as they approach a particular level of sales of products, they may become eligible for those sorts of bonuses.

Senator GIBSON—The other interesting point that someone made was the comparison with an industry fund that goes for heavy external promotion at substantial cost but the consumer is led to believe there is no commission fee. But there is a cost in the structure.

Mr Breakspear—I would say the whole cost and fee structure exercise is complicated, but in our view you have to keep coming back to the consumer and the purchase decision they are making. Where there are incentive payments at work, no matter where the context is, in our view the consumer has a right to understand some of the motivations and drivers behind that particular sale that is going on. In terms of advertising, those kinds of costs will appear through the management:expense ratio going forward. They may not be visible at the front end, but they will be visible because a management:expense ratio is one of the things that is in a prospectus document and you can have a look at it, although you may need someone to explain how it works.

Mr Griffin—Just coming back to general insurance, it certainly gets very complicated when you are talking about risk insurance, which is life insurance, income replacement insurance, trauma insurance, house insurance and car insurance.

Senator GIBSON—I understand that. House and car are the common ones about which these matters were really raised. Also, they are quite well defined and well understood products.

Mr Griffin—It is interesting because you will quite often find that an insurance broker may be partly owned by a big insurance company. We say that those sorts of things need to be disclosed in full to the consumer as well because there is the propensity for that share ownership to influence the advice.

Mr Hristodoulidis—To give you an example of the MER that we talk about in our disclosure document, we say:

> It is therefore suggested that an explanation be given to clients about the relevant MER data published in the disclosure statement, product disclosure statement or prospectus as it relates to the client.

So the stuff that we are talking about in terms of marketing would need to be provided as a cost that is included in that MER ratio under these guidelines.

Senator GIBSON—I understand that. It is perfectly understandable with all the risk products and investment and life products for which the commission and costs are only a few per cent, but for general insurance for things such as cars or houses, the total expense might often be 40 per cent to 50 per cent, and it is difficult to explain that cost structure. We all know also that it is a very competitive business.

Mr Griffin—Moving away from commissions per se and onto some general information, there is an increasing trend for financial planners to move their practices to a fee-for-service basis. They have recognised the benefits of having clients paying them annual or half-yearly fees to manage their affairs, and we are seeing more and more emphasis on that. I expect that will only continue to grow.

CHAIRMAN—Have any moved to performance based values?

Mr Griffin—Yes, some of them have. It might be, for example, a fraction of one per cent as an annual percentage fee for the management of the portfolio, which has some mutual benefits. Others have a flat fee, and others might charge an hourly rate. Usually you will find that the asset or performance based fee is the more likely method. Flat fees are also more common than hourly rates.

Senator GIBSON—It would be useful if you could you send us some information or some examples so we have a bit of a feel for the numbers involved.

Mr Griffin—I can give you some coalface contribution here now. In my firm, we charge according to the level of portfolio. If it is more than $100,000, we manage portfolios at about one per cent on the first $50,000, 0.5 per cent for the next $400,000 and then it starts to slide away. It averages out at about 0.75 per cent per annum. There are many variations of that, and we will gladly put that forward.

Senator COONEY—I have a different question arising out of that. You were talking about professional bodies and them being excepted from the regulations and what have you. If you take the legal profession, they have got the guarantee funds which, if you are talking about level playing fields, other professions such as your own do not have. Have you taken that into account in your submissions?

Mr Griffin—We require our principal members, and they are the licence holders, to hold professional indemnity insurance. That is a compulsory requirement of our members to have that.

Senator COONEY—It is not done by legislation, though, is it?

Mr Griffin—No, but we would support that happening. We think that would be very appropriate. In fact, that would do away with the need to have a very notional or token $20,000 security deposit which is not much security for the investing public.

TAKING YOU BACK TO THE 1980S WHEN THE LAW FIRMS, AND I GUESS TO A GREATER EXTENT THE ACCOUNTING FIRMS, STARTED TO BECOME INVOLVED IN FINANCIAL PLANNING, THE GENERAL EXPERIENCE FROM MY OBSERVATION WAS THAT THE FIRMS SAW THIS AS A GROWING TREND. BUT THEN ALONG COMES SOME CRISIS LIKE THE 1987 SHARE CRASH, HUGE INCREASES IN INTEREST RATES IN 1991, THE PROPERTY COLLAPSE AND THEN THE PROPERTY TRUST DISASTER. WE GENERALLY OBSERVED THAT THOSE FIRMS THAT WERE NOT COMMITTED TO IT FULLY HAD SOME DIFFICULTY CONTINUING TO DO IT. IN FACT, I HAD FIRST-HAND EXPERIENCE WHERE I COME FROM SEEING IT HAPPEN. WHAT YOU CAN SAY IS THAT THOSE FIRMS THAT HAVE REALLY EMBRACED AND COMMITTED TO FINANCIAL PLANNING SERVICES AND HAVE GONE THROUGH THE CURRENT REQUIREMENTS UNDER THE LEGISLATION HAVE DONE A VERY GOOD JOB OF IT. I WOULD BE GREATLY CONCERNED TO THINK THAT THIS SUBSTANTIALLY LOWER LEVEL OF ADMISSION TO HOLD A LICENCE EFFECTIVELY IS NECESSARILY IN THE INTERESTS OF THE CONSUMER. FINANCIAL PLANNING IS A DEDICATED AND DISTINCT PROFESSION AND IT IS NOT SOMETHING WHICH CAN BE DONE ON A PART-TIME BASIS.

JUST TO LET YOU KNOW, THERE IS MUCH CONFUSION OUT THERE ABOUT FINANCIAL PLANNING AND LICENSING AMONGST THE PROFESSIONAL BODIES. IN FACT, ONE OF THEM CONTACTED ME AND I HAD A MEETING WITH THEM EARLIER THIS YEAR, AND THEY WERE OF THE VIEW THAT UNLESS THEIR MEMBERS BECAME CERTIFIED FINANCIAL PLANNERS OR CFPS, WHICH IS OUR DESIGNATION, BY JULY THIS YEAR THEY WOULD NOT BE ABLE TO GET A SECURITIES DEALER'S LICENCE. UNFORTUNATELY, THE MEMBER BODY WERE NOT ABLE TO ANSWER THAT QUESTION. WE WOULD LIKE TO THINK IT WAS POSSIBLE THAT UNDER THE CORPORATIONS LAW YOU HAD TO BE A CFP TO BE A LICENSEE, BUT THAT IS NOT GOING TO HAPPEN. SO THERE IS MUCH CONFUSION OUT THERE, AND I SEE THIS AS AN EFFORT TO TRY AND PERHAPS MAKE IT A LITTLE EASIER FOR THOSE TO BECOME INVOLVED IN IT, AND MAKING IT EASIER IS NOT NECESSARILY IN THE INTERESTS OF THE CONSUMERS.

HAVING SAID THAT, AS A CLOSING STATEMENT, WE FUNDAMENTALLY THINK IT IS GOOD THAT ACCOUNTANTS AND OTHER PROFESSIONALS BECOME INVOLVED IN FINANCIAL PLANNING. WE THINK THAT GREATER AWARENESS IS FUNDAMENTALLY GOOD FOR THE AUSTRALIAN COMMUNITY AND SOCIETY BECAUSE HAVING AN INCREASING NUMBER OF AUSTRALIANS WHO EMBRACE FINANCIAL PLANNING IS GOOD FOR THE NATION. SO WE ARE NOT TAKING THIS FROM THE POINT OF VIEW OF THE PARTICULAR BODIES THAT WOULD BE INCLUDED IN THIS—INDEED, WE COULD BE ONE OF THOSE BODIES IF WE WISHED TO. WE THINK IT IS FUNDAMENTALLY AGAINST THE CONSUMERS' BEST INTERESTS.

Senator COONEY—Following on from that, I have two questions. How many financial planners have you got in the association? Secondly, how successful is the association in getting those members to accept the ethics of the association?

Mr Griffin—We have 12,000 members and our membership grows at about 15 per cent per year. We were formed in January 1992 as the merger of two bodies. Our practitioner members are required to commit to our code of ethics and rules of professional conduct. We recently released our practice guidelines and disclosures, which fully enunciate what we require to the members in terms of how they disclose those fees and commissions as an example of one requirement. If they fall in breach of those requirements then we deal with them under our disciplinary procedures.

Senator COONEY—Have those disciplinary procedures got any legislative backing, or do you get the power to discipline from the membership of the association?

Mr Breakspear—The power to discipline comes through the constitution, and in becoming a member they bind themselves to that constitution and there to comply with our regulations and our standards. That is where the accountability—

Senator COONEY—I am getting off the point a bit but it interests me. Have you ever thought of getting legislative backing for that? It would probably have to be done through the state parliaments.

Mr Breakspear—We have not explored that, because there are a couple of levels of accountability. One is through consumer redress, which is the external complaints scheme that we now run called FICS, the Financial Industry Complaints Scheme. Consumers can have their

first level of redress up to $100,000 if something goes wrong, which is a great initiative. Secondly, the disciplinary code that we have is enforceable as a contract. If you do not comply, then we will exclude you from the membership and publish that finding to the world at large. We also work with ASIC. If we come across something that is really untoward then we will make a referral to ASIC, who can use their subpoena powers and their investigative powers to go and do a full job. So it is on a cooperative basis. We look after more the standards and setting a culture of compliance, and ASIC are really there to chase the bad guys out.

Senator GIBSON—Have many accountants gone through the process and joined your association?

Mr Griffin—What is most interesting is that in the second half of last year we launched our professional education program, called Certified Financial Planner Professional Education Program, which is run through the University of Western Sydney. We budgeted for fairly low numbers for that, because we have got some transitional arrangements which see people qualify for CFP under a different basis. However, we currently have about 500 students in that course, 90 per cent of whom are accountants. We see that as a very strong indication of their acceptance of our professional designation. We also can, from our database, determine how many of our members in total are in fact members of the accounting bodies.

Senator GIBSON—Are we talking thousands?

Mr Griffin—We would be talking a couple, I would think. I have not got those numbers at my fingertips.

Senator GIBSON—I just wanted a bit of a feel for it. How many accountants have we got in Australia? Is it 50,000 or 60,000, or something of that order?

Mr Breakspear—A number of our large principal members specialise in having accountants as their agents, and they would probably come to about a couple of thousand who are more dedicated. There are various levels of interest, so you get those who are doing a bit part-time and those who see it to be a real growth area and are dedicated. Often in a partnership you will get a specialist partner who will do it full time, and then the others may have an interest. But it is quite solid and growing.

Mr Griffin—I want to just make one final observation about where financial services are heading. In perhaps 10 years time you will walk into a business which is under the name of a financial services business. It might have started out as a financial planning business, a law firm or an accounting practice, but within those firms you will find all of those skills and disciplines being practised—housing loans, insurance and all those things. It will be a one-stop shop.

Senator GIBSON—It makes sense.

Senator COONEY—Who provides the lecturers for the course? Does your association do that?

Mr Griffin—No. The university contracts their lecturers themselves. Many of those lecturers are, in fact, our members as well. They are people who have been in the industry for quite a long time. Our members actually contributed to writing the curriculum for it.

Senator COONEY—I would be interested. Could you give us a brochure that tells us what you lecture in and what is involved?

Mr Griffin—Absolutely.

Senator COONEY—Thank you.

CHAIRMAN—Just before we wind up—I know we are over time—can you just quickly outline the concerns you expressed in your submission regarding the impediments in the legislation to the growth of e-commerce and which areas in the bill in relation to disclosure you think are based more on the requirements of paper administration than e-commerce?

Mr Breakspear—There are a couple of areas that we looked at at the time. I think one of them was the prospect of incorporation by reference. What we want to make sure is that the document that is the decision-making document for the consumer contains all the key information to make an investment decision and that if the consumer wants to go further they can access that information by request, or by working with their adviser or through perhaps looking on an Internet site or something like that.

WE WANT TO MAKE SURE THAT THE DOCUMENT—THE KEY DECISION-MAKING DOCUMENT—IS NOT OVERLOADED, BECAUSE THE PROBLEM WITH PROSPECTUSES HAS BEEN THEY HAVE BEEN OVERLOADED. THAT IS MAINLY BECAUSE THEY ARE A LEGAL DEFENCE DOCUMENT, RATHER THAN A DECISION-MAKING DOCUMENT. INCORPORATION BY REFERENCE IS SOMETHING THAT WILL TAKE AWAY SOME OF THE OVERLOAD OF DETAIL IN THERE. MAKING SURE THAT THAT DOCUMENT IS NOT OVERLOADED WAS OUR MAIN CONCERN. IF YOU HAVE IT AS A SUMMARY DOCUMENT, THEN IT IS EASIER TO HAVE ON A WEB SITE OR HAVE ELECTRONICALLY. IF PEOPLE WANT TO GO FURTHER, THEY CAN SEARCH THAT INFORMATION ON REQUEST. THAT IS OUR MAIN CONCERN.

Mr Hristodoulidis—One of the things that is not contained in the documents which has come through our committee structure—we have just recently set up an e-commerce advisory committee—is the issue of electronic signatures. At this stage, you still need the paper trail because electronic signatures are not recognised by the law. That is the one area where we see we could speed up the process by having that get through parliament. Obviously, there are details we have to work through in terms of security for those electronic signatures. That is probably the main concern that has come out of the e-commerce advisory committee.

CHAIRMAN—I thank each of you for appearing before the committee and the answers you have given to our questions this afternoon. It has been very helpful. I now call the representatives of the Australian Financial Markets Association and the Securities and Derivatives Industry Association.

[14.27 p.m.]

FARROW, Mr Kenton Geoffrey, Chief Executive, Australian Financial Markets Association; Managing Director, Securities and Derivatives Industry Association

RAPPELL, Mr John Robert, Director, Research and Policy, Australian Financial Markets Association; Director, Research and Policy, Securities and Derivatives Industry Association

CHAIRMAN—We have before us your submission, which we have numbered 61. Do you wish to make an opening statement in relation to your submission before we proceed to questions?

Mr Farrow—The Australian Financial Market Association is an association of organisational members. There are about 200 organisational members—or just short thereof. The Securities and Derivatives Industry Association is also an association of organisational members, which is just short of 100 member organisations. We are in the process of establishing individual membership status as well and that is being dealt with in conjunction with the building of a profession that will be around both those sectors.

THE AUSTRALIAN FINANCIAL MARKETS ASSOCIATION REPRESENTS WHAT WE TERM AS THE 'OVER-THE-COUNTER MARKETS' OR THE 'WHOLESALE FINANCIAL MARKETS'. PRETTY CLOSE TO 99 PER CENT ARE WHAT YOU WOULD CALL 'INTER-BANK' STYLE TRANSACTIONS AND DO NOT HAVE A RETAIL ACCESS OR FLAVOUR.

THE SECURITIES AND DERIVATIVES INDUSTRY ASSOCIATION REPRESENTS ALL THE STOCKBROKERS OF THIS COUNTRY AND HAS ONLY DONE SO FOR THE LAST SIX MONTHS. IT WAS FORMED IN NOVEMBER LAST YEAR. IT CAME ABOUT BECAUSE THE BROKERS IN THIS COUNTRY USED TO BE MEMBERS OF THE AUSTRALIAN STOCK EXCHANGE, BUT AS THE AUSTRALIAN STOCK EXCHANGE BECAME A CORPORATE ENTITY IT WAS NO LONGER ABLE TO REPRESENT THE INTERESTS OF INDIVIDUALS AND THEREFORE THEY LOOKED TO FORM A REPRESENTATIVE ASSOCIATION. I THINK THERE ARE TOO MANY ASSOCIATIONS IN THIS COUNTRY IN THE SECTOR. BY WAY OF EFFICIENCY—I THINK THERE ARE TOO MANY ASSOCIATIONS IN THIS SECTOR IN THIS COUNTRY—WE CAME UP WITH A MODEL WHERE WE COULD ACTUALLY RUN BOTH AN OVER-THE-COUNTER ASSOCIATION AND AN ON-EXCHANGE ASSOCIATION OUT OF A SINGLE INFRASTRUCTURE WITH A SINGLE OFFICE AND A SINGLE DIRECTOR OF POLICY. THEREFORE, THE SUBMISSION THAT WE HAVE PUT IN FRONT OF YOU COMES COBADGED, REPRESENTING BOTH THE OVER-THE-COUNTER MARKETS AND THE ON-EXCHANGE SECURITIES MARKET.

Mr Rappell—We have some general introductory statements that reinforce the submission. In the area of general issues, we recognise that the financial markets are only one part of this omnibus regulation, unlike in the past, where chapters 7 and 8 of the Corporations Law were exclusively focused towards the financial markets. Therefore, there are some issues in this that are wider than the financial markets insurance. I have heard you asking questions of the FPAA just prior to us. We believe that there is some detail to be resolved and the devil is still in the

detail, particularly in the area of clearing and settlement, market misconduct, and transition provisions. We are looking forward to working on those particular provisions and getting some flesh on the bone.

IN THE MAIN, THE DRAFT BILL REPRESENTS THE OUTCOMES OF THE FINANCIAL SYSTEM INQUIRY FINAL RECOMMENDATIONS. NATURALLY, IT DOES UNDEREMPHASISE SOME OF THE NON-LEGISLATIVE APPROACHES. ONE EXAMPLE OF THIS IS WHERE EMPLOYEES OF ANOTHER COMPANY WITHIN THE GROUP CANNOT ACT AS AUTHORISED REPRESENTATIVES WITHOUT AN AUTHORITY FROM WITHIN THOSE GROUPS. SO THERE IS A LACK OF THE RECOGNITION OF GROUP COMPANIES THAT WAS SUGGESTED IN THE FSI FINAL RECOMMENDATIONS. WE WOULD ALSO LIKE TO SAY THAT THE CONSULTATION WITH INDUSTRY—OUR INDUSTRY, AT LEAST—TO DATE HAS BEEN FIRST CLASS AND WE THINK SETS A VERY HIGH WATER MARK FOR FURTHER LEGISLATIVE CHANGES.

I WANT TO JUST REINFORCE SOME OF THE POINTS OF OUR SUBMISSION BRIEFLY. FIRSTLY, I GO TO THE DEFINITION OF 'ADVICE'. FROM OUR PERSPECTIVE, MOST OF THE INFLUENCE OR IMPACT OF THE BILL RESTS ON THIS DEFINITION. HOWEVER, THE DEFINITION IS MATERIALLY FLAWED AND REQUIRES SOME REDRAFTING. SOME OF THIS REDRAFTING IS RELATIVELY STRAIGHTFORWARD; SOME OF IT IS A LITTLE BIT MORE COMPLEX IN CONCEPT. FOR EXAMPLE, WE BELIEVE THE DISTINCTION BETWEEN 'PERSONAL' AND 'GENERAL' ADVICE IS MISLEADING, SIMPLY BECAUSE THE ENGLISH LANGUAGE USE OF THOSE WORDS IS NOT SIMILAR TO THE PROPOSED LEGISLATIVE USE, AND WE HAVE MADE SOME POINTS ABOUT THAT.

IT IS ALSO FAIR TO SAY THAT IN OUR CONSULTATION WITH THE STOCKBROKERS THEY HAVE ASKED FOR SPECIAL CONSIDERATION FOR THE NATURE OF THEIR OPERATIONS. IT IS FAIR TO SAY THAT THE STOCKBROKERS PUT THROUGH AROUND 100,000 TRANSACTIONS PER DAY IN THAT INDUSTRY AND THROUGH THE ASX. THEY ARE HIGH VOLUME BUSINESSES, AND UNDERTAKING SOME OF THE PROVISIONS OF THE PROPOSED DRAFT IS DEFINITELY GOING TO INCREASE THEIR COMPLIANCE COSTS, THE DEGREE TO WHICH WE ARE NOT ENTIRELY SURE AT THIS STAGE.

SECONDLY, WE BELIEVE THAT ASIC REQUIRES FURTHER POWERS OF MODIFICATION AND EXEMPTION. ASIC HAVE REALLY BEEN GIVEN INSUFFICIENT POWERS OF MODIFICATION AND EXEMPTION, PARTICULARLY IN RELATION TO LICENSING. AT THE SAME TIME, WE BELIEVE THE ACCOUNTABILITY CRITERIA REQUIRE NEGOTIATION WITH STAKEHOLDERS, AND IT IS A BIT TOO NARROW AT THIS CURRENT TIME FOR ASIC. THEY HAVE DISCUSSED THAT A BIT IN THEIR SUBMISSION.

THIRDLY, I REFER TO THE PROFESSIONAL BODY EXEMPTION. I RECALL SENATOR CONROY MAKING COMMENTS AT THE CEDA BRIEFING ON 4 MAY 2000 ABOUT WHETHER THE PROFESSIONAL BODY EXEMPTION FROM LICENSING SHOULD EXIST, AND WE WOULD LIKE TO SAY THAT WE STRONGLY SUPPORT IT. WE THINK IT SHOULD BE EXTENDED PAST ADVICE ONLY BUSINESS. WE SUPPORT SELF-REGULATORY ASPECTS STRONGLY, AND THESE ARE FULLY SUPPORTED IN THE FINANCIAL SYSTEM INQUIRY FINAL RECOMMENDATIONS IN PARTS AND CERTAIN ASPECTS. SELF-REGULATION IS DEMONSTRABLY MORE POWERFUL, MORE REACTIVE AND MORE FLEXIBLE THAN LEGISLATION. AN EXAMPLE OF THIS IS THE ACCOMMODATION OF E-COMMERCE IN FOREIGN

EXCHANGE TRADING IN AUSTRALIA, AND THAT HAS BEEN IN PLACE FOR SOME YEARS NOW.

FOURTHLY, THERE IS THE APPROVAL OF CODES. WE AGREE WITH THE SUGGESTION THAT ASIC APPROVE CODES, BUT WE WANT THAT APPROVAL TO BE WHERE THE CODES ARE NOT INCONSISTENT WITH THE LAW—AS OPPOSED TO CONSISTENT WITH THE LAW—AND ONLY THE LAW THAT ASIC HAS THE RIGHT TO ADMINISTER, AND NOT AS A GENERAL CONCEPT. OF COURSE, WE DO NOT WANT THE RULES TO BE SO TIGHT AS TO HAMPER THE SELF-REGULATORY EFFECT OF THE CODES. IN OTHER WORDS, WE DO NOT WISH THE CODES TO BE SO REGULATED THEY BECOME DE FACTO REGULATION OR LEGISLATION BY DEFAULT.

FIFTHLY, I MENTION TRANSITION ISSUES. WE MENTIONED THIS BEFORE AS ONE AREA WHERE SOME FURTHER DETAIL COULD BE FLESHED OUT, PARTICULARLY IN SOME ASPECTS OF EXCLUDED MARKETS. PARTICULARLY UNDER CHAPTER 8 OF THE CORPORATIONS LAW, THEY REQUIRE A TWO-YEAR TRANSITION PERIOD. THIS IS COVERED VERY LIGHTLY IN THE COMMENTARY, WHICH SAYS THAT SOME MARKETS COULD BE DEEMED TO CURRENTLY HAVE A LICENCE. HOWEVER, WE BELIEVE THERE ARE SOME SIGNIFICANT MARKETS THAT REQUIRE IT TO BE STATED: 'IN THE TWO-YEAR TRANSITION PERIOD THAT HAS BEEN GRANTED TO CURRENT LICENSEES'. THE SECOND ISSUE OF TRANSITION IS THE QUESTION OF THE NEED FOR GRANDPARENTING, AS OPPOSED TO GRANDFATHERING—WE ARE INTRODUCING A POLITICALLY CORRECT TERM FOR THAT. WE ARE SUPPORTIVE OF GRANDPARENTING, BUT IT ASSUMES A WORKLOAD WHICH IS CONSISTENT WITH THE REQUIREMENT FOR AN INTENSE SCRUTINY OF EACH LICENCE APPLICATION. WE QUESTION WHETHER THERE IS, IN FACT, A WORKLOAD OR REQUIREMENT TO INTENSELY SCRUTINISE EACH LICENCE APPLICATION THAT CURRENTLY EXISTS. THIS EFFORT MAY BE MISDIRECTED.

THE SIXTH AND FINAL POINT OF MY INTRODUCTORY STATEMENT IS IN RELATION TO THE LICENSING OF MARKETS. OBVIOUSLY AS WE REPRESENT OVER-THE-COUNTER MARKETS, WE VERY STRONGLY SUPPORT THE EXEMPTION FOR BILATERAL OVER-THE-COUNTER TRADING FROM THE MARKET DEFINITION, BUT WE DO NOT SUPPORT WHAT WE CALL THE 'FACILITY DISALLOWANCE' FROM THIS EXEMPTION AS IT IS ANTI E-COMMERCE PROVISION. FINALLY—AND I WILL END ON THIS POINT—THE MONEY BROKERS OF THIS MARKET, OF WHICH THERE ARE ONLY ABOUT TWO OR THREE—

Mr Farrow—There are three.

Mr Rappell—They are a really rare species, but they hold an economically significant function and require an explicit exclusion, not just merely a mention in the bill as it is currently envisaged. They are not markets and they should not be licensed as markets. That concludes our introductory statement.

CHAIRMAN—Thank you, Mr Rappell. You raised the issue of the distinction between retail and wholesale clients. Could you enlarge the problem that you see there?

Mr Rappell—At the current time we see number of problems. It is a fairly arbitrary break between retail and wholesale clients. I am just flicking to it now in our submission. Probably the biggest problem is that organisations that are small, for example, less than 20 employees—and

we use the example of a fund manager who manages a great deal of funds on behalf of another client—would have to be treated as retail in this test, and there is no ability for them to change their status. Sometimes those organisations are managing large amounts of money that may enable them to jump into the other category which says that, if they do a large transaction, they are treated as wholesale, but it may not; it depends on the size of their transaction.

AS WE SAID IN THE SECOND PART OF OUR SUBMISSION, IN THE CASE OF AN INEQUITY TRANSACTION WE WOULD LIKE THAT $500,000 DEFINITION THAT IS CURRENTLY ENVISAGED TO HINGE ON THE ORDER SIZE AS OPPOSED TO THE INDIVIDUAL EXECUTIONS UNDER THE PARTICULAR ORDER. OBVIOUSLY THERE ARE PROBLEMS IN THE DEFINITION BETWEEN 'INVOLVED IN MANUFACTURING' AND 'NOT INVOLVED THE MANUFACTURING' AND THE HEADCOUNT BASICALLY IS FOR THAT. TO BE HONEST I WOULD HAVE TO SAY THAT, WHEN WE PUT THIS BEFORE STOCKBROKERS AND FINANCIAL MARKET PARTICIPANTS WHO TALK TO CLIENTS ON THIS BASIS, THEY FOUND IT A LITTLE BIT INCOMPREHENSIBLE THAT THEY WOULD HAVE TO, FOR EXAMPLE, MAKE A DECISION AS TO WHETHER SOMEBODY WAS INVOLVED IN MANUFACTURING AND WHAT THEIR HEADCOUNTS WERE AT A PARTICULAR POINT IN TIME AND THINGS OF THAT NATURE. SO IT WILL BE DIFFICULT, WE BELIEVE, FROM THE FEEDBACK OF OUR MEMBERS TO ADMINISTER THAT PARTICULAR TEST. I THINK THAT IS PROBABLY ALL THAT NEEDS TO BE SAID DIRECTLY ON THIS AT THE MOMENT.

CHAIRMAN—Have you considered the issue that has been raised with us by a number of witnesses—particularly banks and building societies—expressing their concerns about the definition of advice and the fact that, as currently drafted, the definition will catch bank tellers, counter staff and so on? They will be caught up in the requirement to upgrade their skills to comply with section 146. Is that an issue that you have not really considered because it does not have direct relevance to your own circumstances?

Mr Rappell—That issue, as you stated, Senator, has not been put before us. However, our opinion is that the current definition of advice is extremely wide—there is no doubt about that.

CHAIRMAN—Is it too wide?

Mr Rappell—I cannot comment really on whether or not it is too wide. It has incidental capture, and we recognised a little bit of that in our submission.

CHAIRMAN—Another issue that was raised with us earlier—which again we discussed with the previous witnesses—is the commission disclosure requirements and whether they are too wide. They also capture general insurance products and those sorts of things. I do not know whether you have given any consideration to that issue?

Mr Rappell—We certainly have not given as much consideration to this as the FPAs have—I can advise that. The commission disclosure issue as it, for example, concerns the Financial Planning Association has not been raised in either of our two fora at this stage.

CHAIRMAN—Are there any further questions?

Senator COONEY—I want to develop this idea of self-regulation. We all know the general concept of self-regulation. Do you mean that each enterprise would self-regulate or would the regulation be done through your association?

Mr Rappell—The financial system inquiry final report recognised the benefits of industry based self-regulation as it currently operates in Australia and as it is improving over time. I believe that the financial system inquiry recommended that certain aspects of regulation be devolved to industry bodies, to take care of for their constituents. That would, by necessity, not be mandatory. It would be voluntary in some respects and, if they wanted to, they could face off directly towards ASIC as organisations. Some of those aspects include codes of conduct, and in this document I have before me today, which is the *Code of conduct policy framework* released by Warren Truss in March of 1998, the role of self-regulation is fully expanded upon and discussed in great detail as a part of the regulatory spectrum. In the financial system inquiry final report, some of the aspects that are spoken about as being areas that would be best handled by the industry for the industry are accreditation, codes of conduct, discipline of members, education and training, and dispute resolution. We concur with the final findings, and commentary and recommendations, of FSI.

THE PERSPECTIVE WE HAVE ON THIS IS ONE OF BALANCE, AS BETWEEN THE STATUTORY REGULATOR AND THE INDUSTRY—WHICH OF THE TWO IS MORE FLEXIBLE AND WHICH OF THE TWO IS MORE ABLE TO DEAL WITH THE ISSUES AT HAND. IT IS NOT REALLY A MATTER OF COMPETITION SO MUCH AS A MATTER OF COMPLEMENTARINESS.

Senator COONEY—Would you feel the need to have a statutory backup, as they say in the legal profession and I think in the medical profession, too. Although it may be done partly through the professional organisations, there is a statutory underpinning to their self-regulation, as it were. Have you thought about that?

Mr Rappell—Yes, we think about it often. The answer to that question is we have not seen the need to date to have any regulatory fiat to undertake our work. However, we know that the overall responsibility for the day-to-day running of our markets rests with ASIC, so we would like to see some recognition, or devolution or evolvement, of the functionalities to the industry body in some respects on behalf of ASIC. It would not be statutory per se but it may be in their policy statements or in their guidance notes—those subregulatory instruments.

Senator COONEY—The thing that may be of concern there is that if you are a professional body and things get to the point where you say, 'Something ought to happen here,' and you then refer it to ASIC, there just seems to be a bit of a contradiction—that I would be a member of yours and then get referred to ASIC.

Mr Rappell—We would rather hope that, should we be a profession, the provisions that we had would complement the laws that ASIC would have. We would concern ourselves principally with ethical issues as opposed to legal issues and we would attempt to try and delineate between the legal and the ethical issues. There are some very good examples of this currently. For example, you might say that insider trading is illegal for listed securities and we would say, 'Well, we believe that insider trading is unethical in all trades, not just the ones that are legal.' We have that kind of a provision in our code of conduct. We expand on the legal aspects if, for example, we see the ethical issue as being wider. The same thing is true of, for

example, the statement about harassment and discrimination in our code. It is wider than the law and, to that extent, it is more effective than the law because there are things you can do ethically that do not necessarily require the same burden of proof or accountability that the judicial system requires.

Mr Farrow—A further point is that this is a changing issue: what we are going to decide today will not be what we are going to use tomorrow. You need to have a process in place that allows that evolution. You quite often see that you start off with a law and you have a code and you have an ethic. Quite often some of those codes start to move into becoming law, ethics become codes and new ethics start to emerge. You need a structure that allows for that evolutionary process.

THE SECOND POINT IS THAT IF YOU WANT TO START CHANGING STATUTES THAT IS A VERY LONG-DRAWN-OUT PROCESS—WHICH WE ARE GOING THROUGH RIGHT AT THIS VERY MOMENT—AND IT TAKES MANY YEARS TO HAPPEN. BUT YOU CAN ALTER CODES VERY QUICKLY. WHEN YOU ARE LOOKING TO TAKE ACTION WITHIN A MARKETPLACE, BY THE TIME SOMEONE ACTUALLY CREATES A MISDEMEANOUR THAT REQUIRES PROSECUTION AND INVESTIGATION—AS WE HAVE BEEN THROUGH IN THE LAST FEW YEARS—SEVERAL YEARS HAVE PASSED BY. I WILL NOT GIVE EXAMPLES ON THE RECORD, BUT THERE ARE EXAMPLES OF PEOPLE WITHIN THE OVER-THE-COUNTER MARKETS THAT HAVE BREACHED THE CODES AND THEY ARE NO LONGER EMPLOYED IN THIS COUNTRY—BUT NOTHING EVER HAPPENED. THERE WAS NO PROSECUTION AGAINST THEM. THERE IS QUITE A LOT OF POWER IN A PROFESSION BEING BROUGHT INTO PLAY AND THAT PROFESSION WORKING IN PARALLEL WITH THE REGULATOR TO DELIVER AN OUTCOME. AS A COUNTRY LOOKING TO PROMOTE OURSELVES GLOBALLY AS BEING A VERY ETHICAL AND SECURE MARKET TO OPERATE IN, IT IS A VERY STRONG MESSAGE TO GIVE OUT THERE.

Senator COONEY—This is a bit of a hard question in the sense that it asks you to assess yourself, which is a bit unfair in some ways, but how do you think your members are responding to the ethical culture that you are trying to put out?

Mr Farrow—It is quite easy actually to answer. When we at AFMA went down this path, the over-the-counter market had very little structure or licensing at all. It has always been the exchange based markets that had those controls. We started to introduce this concept, and right from the beginning everyone accepted it as being something they had to adopt, providing it did not impact on them too heavily on day one and providing everyone who came in behind them had to follow suit. Therefore we embarked on the process like that.

AS IT UNFOLDED, ORGANISATIONS STARTED TO REALISE THAT THERE WAS SOME VERY SIGNIFICANT VALUE IN ALL THEIR OPERATIVES UNDERSTANDING THEIR OBLIGATIONS UNDER LAW. THEREFORE, WHAT WE THOUGHT WE WOULD END UP EXEMPTING ALL THE MATURE DEALERS IN DID NOT HAPPEN. THE ORGANISATIONS ALL THEN REQUESTED THEIR OPERATIVES TO ACTUALLY GO THROUGH THE ACCREDITATION EXAMINATION PROCESS. WE HAD VERY FEW EXEMPTIONS IN THE END AND EVEN THOSE EXEMPTIONS THAT WE HAVE HAD ARE COMING BACK NOW, AFTER WE HAVE BEEN IN OPERATION FOR TWO YEARS, RESITTING THE ACCREDITATION BECAUSE THEY DID NOT LIKE THE FACT THAT THEY HAD AN E AFTER THEIR

QUALIFICATION. THEY WANTED TO GET A PROPER QUALIFICATION. SO THE INDUSTRY HAS ACCEPTED IT WITH OPEN ARMS.

IN THE EQUITY SIDE, WHICH WE ARE MOVING DOWN, THE WHOLE MOTIVATION BEHIND SETTING UP AN ASSOCIATION WAS TO CREATE A PROFESSIONAL BODY. THE STOCKBROKERS ARE PUSHING THE AGENDA AS OPPOSED TO BEING DRAGGED BEHIND. I THINK THE ANSWER IS THAT THE INDUSTRY ON BOTH THE OVER-THE-COUNTER AND EXCHANGE BASED SIDE HAVE ACCEPTED THIS VERY OPENLY AND THEY SEE IT AS A PROFESSIONAL BENEFIT—AS SOMETHING THAT CAN HELP THEM ENHANCE THEIR SERVICES—AS OPPOSED TO A LEGAL REQUIREMENT. IT IS NOT COMPLYING WITH THE LAW; IT IS DOING SOMETHING SUCH THAT THEY THINK THEY WILL BE ABLE TO DELIVER A FAR BETTER SERVICE.

Senator COONEY—Do you run any courses?

Mr Farrow—Yes, we do. We are new in this field. We started off by designing and operating the accreditation process. Of course, attached to any accreditation process is continuing education, so what we are now building is continuing education program to back up that accreditation. We do a lot of work which we design in house but we also rely very heavily on the infrastructure that is currently in place in this country to provide other forms of training.

Senator COONEY—Do you members come to you? Do they come to you for—'advice' might be too strong a word—discussion about things? In other words, do they seem to find a useful source with you?

Mr Farrow—In the area of the operation of the markets themselves, they all come to us because we run a committee structure that represents each of the independent components of the markets. So all the issues emerge via that committee structure and then we get a lot of input from there. From the point of view of education and professionalism, most of that comes down to us via either senior management or their accreditation or HR compliance style of people. It comes from more of a centralised source within the organisation, if you talk about individual professionalism.

CHAIRMAN—Can I ask your view in relation to civil penalty provisions relating to market manipulation and the concerns that intent is not required for the penalty to be imposed?

Mr Rappell—This is a very interesting aspect. I cannot recall right off the top of my head what our recommendation but I know we submitted on it.

Senator COONEY—I think you mentioned something about intent.

Mr Rappell—Yes, we did mention something about intent. The current market manipulation provisions are drafted in the following way, approximately. They say that market manipulation is the activity where you do two or more transactions and it has a number of intent aspects to it, but the intention is to induce another person to trade at a level which is other than, if you like, the bona fide level at a particular point in time. Market manipulation hinges on the intent to force somebody else to trade at a level which is not there.

THE PROBLEM FOR US IN THIS PARTICULAR ONE IS THAT IT IS QUITE POSSIBLE TO UNDERTAKE A NUMBER OF TRANSACTIONS. IF, FOR EXAMPLE, FOR YOU TO BE A BUYER IN A MARKET OR SOMETHING LIKE THAT AND FOR ANOTHER PERSON TO TRADE AT A DIFFERENT LEVEL. YOU MAY NOT HAVE THE INTENT OF MARKET MANIPULATION PER SE, BUT GENERALLY BECAUSE OF YOUR BUYING OR SELLING ACTION THE PRICE MIGHT BE MOVED AWAY. THAT IS COMMONPLACE IN ANY MARKET, BE IT STOCK, FINANCIAL MARKETS, CATTLE OR ANY SORT OF COMMODITY. BUT WE SEE IT AS IMPORTANT THAT THE PERSON INTEND TO BE MARKET MANIPULATING AS OPPOSED TO JUST BE BUYING OR SELLING AND THAT PRICE BE MOVING IN ACCORDANCE WITH THEIR BUYING OR SELLING ORDER. I THINK THAT IS THE NATURE OF OUR QUERY ON THAT ONE.

CHAIRMAN—Would intent be a difficult matter to prove?

Mr Rappell—Absolutely. That is one of the reasons why in the past there have been very few prosecutions against this particular provision. Notwithstanding, it is the case that people will naturally come to the market and buy large quantities of shares on a listed exchange for entirely bona fide reasons. I do not think they should fall under investigation for market manipulation.

Senator COONEY—Since it is a civil penalty, would you be happy if instead of using the word 'intent' it said 'consciousness'—if he or she could be shown to be conscious of the effect of what was happening, rather than intending to have the outcome?

Mr Rappell—We have debated whether we could suggest other words as opposed to 'intent', which obviously has a specific legal interpretation, but we have not formed any particular conclusion there. We thought of 'purpose', for example.

Senator COONEY—It is a classic sort of problem, isn't it? You want to protect the transactions and on the other hand you do not want to punish somebody who has gone about it innocently.

Mr Farrow—An organisation placing a large order and prepared to buy up to a certain range will move a market. They could go in there knowing that they are going to move the market because they need to get access to a large volume. They will end up buying up to the point where they reach their limit of how far they are prepared to move the market. But there is no intent to create a false market; their intent is to buy a very large volume of that instrument.

Mr Rappell—It is also worthwhile saying that, in respect of this section of our submission, we are referring to the commentary provisions. We look forward to seeing the actual draft rules themselves. One of the reasons why we have been a little bit lightweight on that particular comment is the actual draft legislation is not there for us to look at. As we said in our introductory statement, it is very important that we see the actual letter of the law in terms of the market misconduct provisions. If I can give you some examples, the current market misconduct provisions in chapter 7 of the Corporations Law relating to securities and chapter 8 relating to futures are vastly different from each other. They were drafted at different times by different people who have different philosophical backgrounds. Obviously, the new sections will be 'monomarket', if you like. They will take a provision which encompasses all trading. However, there are certain reasons why you would want, for example, to have different provisions for a

derivative transaction as opposed to a security. An example is that short selling provisions in derivatives are meaningless whereas short selling provisions in securities have some purpose. But we would like to see the black and white provisions before we can actually sit back and argue too much for or against a certain provision.

Mr ROSS CAMERON—Why do we say that money brokers are not operating in the market?

Mr Rappell—Money brokers have an interest in economic responsibility in terms of the over-the-counter financial markets. We have explained the money broker's operation to government and Treasury from time to time. In fact, that is the reason why it is recognised in the draft provisions. It is very similar to a marriage broker where, for example, they find two parties who have equal and opposite, or relatively equal and opposite, interests and they simply introduce them to each other and take a fee from both parties for the introduction. If, for example, those two parties did not know that they were transacting with each other—in other words, if it was anonymous or if it was not bilateral or if they were not taking credit risks from each other—then perhaps they could be seen to being operating the market. But really all they are doing is just simply finding buyers and sellers and they are incidentally captured as a market as if they were a stock exchange where you have multiple buyers and multiple sellers putting their prices on a screen. You do not know with whom you are going to trade.

IT IS SIMPLY PROPOSED THAT THEY BASICALLY SAY IN THE COMMENTARY: WE RECOGNISE THAT THEY SHOULD NOT BE LICENSED AS MARKETS AND WHAT WE BELIEVE THEY SHOULD DO IS APPLY TO ASIC TO BE EXEMPTED FROM THE MARKET LICENSING PROVISIONS AND THEN, ONCE THEY HAVE GOT THAT, REAPPLY TO ASIC FOR A FINANCIAL SERVICES PROVIDERS LICENCE AS IF THEY WERE A BANK. FIRST OF ALL THEY ARE INCIDENTALLY CAUGHT, THEY THEN HAVE TO ASK FOR AN EXEMPTION FROM ASIC, THEY HAVE TO THEN REAPPLY FOR A NEW LICENCE. WE ARE SAYING THAT THESE GUYS ARE FAIRLY SMALL OPERATIONS, THIS IS EXTREMELY ONEROUS AND HAS AN EXTREMELY HIGH COMPLIANCE COST. WHY CAN'T THEY SIMPLY BE EXCLUDED? WE HAVE GIVEN TWO POSSIBLE DRAFTING WAYS THEY COULD ACTUALLY GET THAT EXCLUSION. THERE ARE ONLY TWO OR THREE OF THEM AND THEIR OPERATION IS NOT AS A MARKET. THEY ARE VERY DIFFERENT FROM STOCKBROKERS, WHO TAKE PRINCIPLE POSITIONS AND THINGS OF THAT NATURE, AND OPERATE AS AGENTS.

CHAIRMAN—Mr Rappell and Mr Farrow, thank you very much for appearing before the committee, giving your evidence and answering our questions today.

[2.59 p.m.]

ROFE, Mr Alfred Edward Fulton, Chairman, Australian Shareholders Association Ltd

CHAIRMAN—I welcome Mr Ted Rofe. We do not have a written submission from you, Mr Rofe. Therefore, we will ask you to present your submission verbally and then we might take some questions.

Mr Rofe—I guess the role and activities of the Australian Shareholders Association are fairly well known to the committee so I do not need to say much about that except to remind you that, in spite of our name, we represent the interest of investors in not only shares and other listed securities but also managed investment, superannuation, life insurance and so forth—in general, in financial investment products. That is our perspective in relation to this particular bill.

TO PUT IT ANOTHER WAY, ONE REASON WE DID NOT PUT IN A FORMAL SUBMISSION TO THIS INQUIRY WAS THAT, AS YOU WOULD PROBABLY KNOW, THERE WERE FAIRLY EXTENSIVE TREASURY CONSULTATIONS IN APRIL THIS YEAR. WE HAD ANTICIPATED THAT AN AMENDED DRAFT BILL MIGHT HAVE EMERGED FROM THAT, SO THAT RATHER THAN RE-ARGUE WHAT WE HAD SAID IN APRIL, WE WOULD HAVE BEEN ABLE TO HIGHLIGHT ANY REMAINING ISSUES.

TODAY I WOULD LIKE TO MENTION A COUPLE OF KEY AREAS OF PARTICULAR CONCERN TO US. I HAVE ONLY HEARD A BIT OF THE EVIDENCE HERE AND I HAVE NOT SEEN THE TRANSCRIPTS OF THE PREVIOUS HEARINGS. I GUESS ONE TOPIC THAT HAS COME UP IS THIS QUESTION OF FINANCIAL PRODUCT ADVICE AND TRYING TO DRAW THE LINE BETWEEN INFORMATION AND ADVICE. OUR BASIC POSITION WOULD BE THAT WE WOULD LIKE TO SEE LEGISLATION WHICH WOULD ENCOURAGE THE DEVELOPMENT OF AN INDEPENDENT FINANCIAL ADVICE PROFESSION AS DISTINCT FROM WHAT WE HAVE IN A LOT OF CASES AT THE PRESENT TIME—NAMELY, SALESMEN IN DISGUISE.

ON THAT PARTICULAR QUESTION, WE WOULD OPPOSE THE CONCEPT OF DECLARED PROFESSIONAL BODIES. WE THINK THAT, IF YOU ARE GOING TO BE A PROFESSIONAL FINANCIAL ADVISER, YOU SHOULD BE ONE. FOR EXAMPLE, IF YOU HAVE A COLD YOU MIGHT GO DOWN TO THE LOCAL PHARMACIST TO GET SOME MEDICINE AND THEY MIGHT TELL YOU THIS ONE IS GOOD OR THAT ONE IS BAD. YOU DO NOT GO THERE FOR MEDICAL ADVICE. IF YOU WANT MEDICAL ADVICE YOU GO TO A DOCTOR.

PERHAPS SOME OF THE PROBLEMS THAT HAVE OCCURRED IN RELATION TO SOLICITORS PROVIDING MORTGAGE INVESTMENTS DEMONSTRATE THE PROBLEM. THERE WAS PERHAPS A FEELING THAT SOLICITORS ARE MEMBERS OF A WELL-KNOWN PROFESSION AND SUBJECT TO ALL THE DISCIPLINE OF THAT PROFESSION AND SO YOU DO NOT NEED TO HAVE THEM REGISTERED AS SOME SORT OF INVESTMENT BODY. I THINK HISTORY HAS SHOWN THAT THIS IS WRONG. WE DO QUITE STRONGLY OPPOSE THE IDEA OF DECLARED PROFESSIONAL BODIES. WE THINK THAT THE APPROPRIATE WAY TO GO IS TO SUPPORT SOME SORT OF INCIDENTAL ADVICE EXEMPTION. IF YOU GO TO AN ACCOUNTANT OR TO A LAWYER, SOME OF THE ADVICE THEY GIVE YOU MAY

RELATE TO INVESTMENTS, BUT THEY ARE REALLY NOT EQUIPPED TO GIVE PROPER FINANCIAL PLANNING ADVICE.

I WAS INTERESTED IN A PHRASE THAT I THINK KEN BREAKSPEAR USED WHEN HE REFERRED TO ACCOUNTANTS AS PROBABLY 'DOING A BIT OF IT PART-TIME'. I DO NOT THINK THAT IS THE RIGHT WAY. ACCOUNTANTS MAY CHOOSE TO SPECIALISE IN FINANCIAL PLANNING ADVICE. IF THEY DO, I THINK THEY SHOULD BE SUBJECT TO THE QUALIFICATIONS, AND THEY SHOULD BELONG TO A SEPARATE FINANCIAL PLANNING PROFESSIONAL BODY. I THINK JUST BEING CPAS OR MEMBERS OF THE INSTITUTE OR SOMETHING LIKE THAT SHOULD NOT ENTITLE THEM TO PRACTICE AS FINANCIAL PLANNERS WITHOUT FULL QUALIFICATIONS AND MEMBERSHIP OF A SPECIALISED PROFESSIONAL BODY.

ON THE QUESTION OF DISCLOSURE BY FINANCIAL SERVICE PROVIDERS, I GUESS THERE ARE TWO ASPECTS TO THIS. ONE IS DISCLOSURE ABOUT THEMSELVES AND THEIR ACTIVITIES AND THEIR INDEPENDENCE. THE OTHER IS IN RELATION TO PRODUCT DISCLOSURE. I THINK THEY ARE TWO SEPARATE THINGS. I WOULD LIKE TO REFER BRIEFLY TO PAGE 107 OF THE COMMENTARY. THERE IS A REFERENCE THERE TO VARIOUS DOCUMENTS: THE FINANCIAL SERVICES GUIDE, THE STATEMENT OF ADVICE AND THE PRODUCT DISCLOSURE STATEMENT. ONE POINT WE RAISED IN THE TREASURY DISCUSSIONS WAS THE OPPOSITION TO ABBREVIATING THESE AS FSG AND SOA AND SO FORTH OR CALLING THEM FINANCIAL SERVICE SERVICES DOCUMENT 1, FINANCIAL SERVICES DOCUMENT 2 ET CETERA. I THINK THAT IS ONLY GOING TO BE CONFUSING TO USERS.

Senator COONEY—I think it would be confusing for the Senate.

Mr Rofe—I do not know about that. I think the names are quite good: financial services guide, statement of advice and product disclosure statement. They serve a particular purpose. I think it would be better if they came to be known by those names so that people knew exactly what they were dealing with and did not get confused by mnemonics.

ON THE QUESTION OF THE RETAIL AND WHOLESALE CLIENT DISTINCTION, I AM NOT PARTICULARLY HAPPY WITH 761G. THE DISTINCTION BETWEEN A RETAIL AND A WHOLESALE CLIENT IS IMPORTANT IN SOME AREAS BUT NOT IN OTHERS. IT IS PARTICULARLY IMPORTANT IN THE AREA OF COMPENSATION AND COMPLAINTS HANDLING. ONE OF THE MAJOR DISADVANTAGES OF A RETAIL CLIENT IS THAT, EVEN IF THEY LEGAL RIGHTS, IT CAN BE COSTLY AND TIME CONSUMING TO EXERCISE THEM. IF THEY ARE DEALING WITH A LARGE FINANCIAL BODY, THAT BODY HAS THE FINANCIAL RESOURCES TO ENGAGE SOPHISTICATED LEGAL ADVICE TO FIND TECHNICALITIES AND CAN DELAY RESOLUTION OF THE DISPUTE FOR A LONG PERIOD OF TIME UNTIL THE RETAIL CLIENT GIVES UP IN FRUSTRATION. THAT IS IMPORTANT.

ON THE OTHER HAND, I DO NOT THINK IT FOLLOWS THAT A RETAIL CLIENT IS INHERENTLY LESS INTELLIGENT THAN A WHOLESALE CLIENT. IN SOME OF THIS LEGISLATION THERE IS A SORT OF PATERNALISTIC PHILOSOPHY THAT YOU HAVE TO PROTECT RETAIL CLIENTS BECAUSE THEY DO NOT REALLY KNOW WHAT THEY ARE DOING. I DO NOT THINK THAT IS CORRECT AND IT CERTAINLY IS NOT SO FAR AS OUR MEMBERS ARE CONCERNED. YOU CAN FIND EXAMPLES OF VERY INTELLIGENT AND SOPHISTICATED RETAIL INVESTORS AND OF LARGE BUSINESSES WHICH MAKE SIGNIFICANT INVESTMENT MISTAKES. THE INVESTMENT IN BURNS PHILP BY SOMEONE WHO YOU WOULD

HAVE THOUGHT WAS A FAIRLY SOPHISTICATED AND WEALTHY INVESTOR IS AN EXAMPLE OF THAT.

ANOTHER ASPECT OF THIS DISTINCTION IS THE ACCESS WHICH WHOLESALE CLIENTS MAY OBTAIN TO PARTICULAR PRODUCTS AND TO LOWER COMMISSIONS. IT WOULD BE UNFORTUNATE IF RETAIL CLIENTS WERE FROZEN OUT OF SOME OF THESE ADVANTAGES WHICH MAY ACCRUE TO WHOLESALE CLIENTS. IT IS QUESTION OF EVALUATING THE RISK INVOLVED. TAKE THE CASE OF A RETIRED ENGINEER WITH A $500,000 LUMP SUM TO INVEST. OBVIOUSLY, YOU WOULD NOT LIKE TO SEE HIM INVEST IT ALL IN ONE SPECULATIVE INVESTMENT. SUPPOSING, FOR THE SAKE OF ARGUMENT, HE DECIDES TO INVEST $50,000 IN SOME NEW START-UP COMPANY. WHY SHOULDN'T HE BE ABLE TO DO SO? WHY SHOULD SOME OF THESE INVESTMENTS BE LIMITED TO PEOPLE WHO ARE PREPARED TO INVEST $500,000 IN ONE INVESTMENT OR WHO HAVE NET ASSETS OF $2.5 MILLION OR A GROSS INCOME OF $250,000? THERE ARE PLENTY OF PEOPLE WHO, PROVIDING THEIR INVESTMENT IS AN APPROPRIATE SIZE IN RELATION TO THEIR OVERALL FINANCIAL POSITION AND THEY ARE AWARE OF THE RISKS INVOLVED, SHOULD NOT BE PREVENTED FROM INVESTING.

FINANCIAL PRODUCT DISCLOSURE IS THE THIRD POINT I WILL MENTION. IT IS IMPORTANT TO DISTINGUISH BETWEEN, ON THE ONE HAND, PRODUCTS WHICH OFFER A VARIABLE RETURN, USUALLY ACCOMPANIED BY SOME SORT OF RISK, SUCH AS SHARES, MANAGED INVESTMENTS, DEFINED CONTRIBUTION SUPERANNUATION AND INVESTMENT BASED LIFE INSURANCE, AND, ON THE OTHER HAND, PRODUCTS OFFERING A FIXED RETURN, SUCH AS BANK DEPOSITS OR DEFINED BENEFIT SUPERANNUATION, OR PURELY RISK PROTECTION PRODUCTS, SUCH AS GENERAL INSURANCE AND TERM LIFE INSURANCE. THERE ARE IMPORTANT DISCLOSURE DIFFERENCES THERE, OR THERE SHOULD BE, AND I THINK IT IS APPROPRIATE TO HARMONISE, SO FAR AS POSSIBLE, BOTH THE DISCLOSURE REQUIREMENTS AND THE LEGAL REQUIREMENTS IN RELATION TO THE FIRST GROUP—NAMELY, SHARES, MANAGED INVESTMENTS, SUPERANNUATION WITH AN INVESTMENT ASPECT, AND INVESTMENT BASED LIFE INSURANCE. REALLY, WHAT SOMEONE IS INVESTING IN IS AN INVESTMENT, THE RETURN OF WHICH MAY VARY OVER A PARTICULAR PERIOD. THE PARTICULAR LEGAL STRUCTURE THEY CHOOSE DOES NOT AFFECT WHAT THEY ARE LOOKING FOR AND THE TYPE OF INFORMATION THEY NEED TO MAKE AN INFORMED DECISION.

MENTION HAS BEEN MADE ABOUT THE COST AND COMPLEXITY OF INITIAL DISCLOSURE DOCUMENTS AS A BASIS FOR SOME SORT OF ARGUMENT THAT THINGS LIKE MANAGED INVESTMENTS AND SUPERANNUATION SHOULD NOT BE SUBJECT TO A SIMILAR REGIME AS SHARES. MY ARGUMENT THERE WOULD BE THAT IT IS APPROPRIATE TO HAVE A TWO-TIER DISCLOSURE STRUCTURE WHERE YOU MIGHT HAVE A PROFILE STATEMENT OR A SHORT FORM PROSPECTUS, OR WHATEVER YOU LIKE TO CHOOSE, WHICH WILL BE SATISFACTORY FOR MOST INVESTORS, AND THEN A MORE DETAILED DOCUMENT AVAILABLE. I THINK THE SAME THING APPLIES TO ONGOING DISCLOSURE, AGAIN WITH PRODUCTS WHICH INVOLVE INVESTMENT OVER A LONG PERIOD. UP UNTIL NOW THERE HAS BEEN A VERY SERIOUS DEFICIENCY IN RELATION TO SUPERANNUATION, PERHAPS A SOMEWHAT LESS SERIOUS DEFICIENCY IN RELATION TO MANAGED INVESTMENTS AS COMPARED WITH SHARES. I THINK IT WOULD BE APPROPRIATE TO GET THEM MORE OR LESS ON THE SAME BASIS AND, AGAIN, IT MIGHT BE APPROPRIATE TO HAVE A TWO-TIER STRUCTURE. SOME PEOPLE MIGHT GET A SUPERANNUATION STATEMENT WHICH JUST SAYS, 'YOU HAVE X DOLLARS,' BUT FOR A MORE SOPHISTICATED

INVESTOR IT MIGHT BE APPROPRIATE TO HAVE ACCESS TO UNDERLYING INVESTMENT PERFORMANCE STRATEGIES AND SO FORTH. I THINK THAT IS PROBABLY ENOUGH FOR ME TO SAY AT THIS STAGE. ARE THERE ARE ANY QUESTIONS YOU WOULD LIKE TO ASK ME?

CHAIRMAN—Thanks very much, Mr Rofe. Have you considered the issues that have been raised earlier with us in relation to the definition of 'advice', and particularly its impact on banks, building societies and those organisations, especially in relation to providing services in regional and rural areas through agencies and the fact that counter staff and tellers get caught by this 146?

Mr Rofe—I think the problem is serious. I do not know that I have the answer though. I am particularly aware of this question about bank tellers and so forth. On the other hand, some of the poorest displays of performance that I have been aware of have been through bank staff who have been acting—using the phrase I used earlier—as salesmen in disguise, encouraging people to invest in a product without really understanding the product. I must say I went to one well-known bank not very far away from here and a young man with a laptop computer who had a very glamorous Powerpoint display was telling me why I should invest in that particular bank's product, but he did not have the faintest idea what he was doing. He had no financial qualifications or experience that I was aware of. It was embarrassing, frankly.

IF BANKS AND BUILDING SOCIETIES AND OTHER FINANCIAL ORGANISATIONS ARE GOING TO PURPORT TO PROVIDE FINANCIAL ADVICE TO PEOPLE, THEY MUST HAVE APPROPRIATELY QUALIFIED PROFESSIONAL PEOPLE TO DO SO. YOU DO NOT REALLY EXPECT THE BANK TELLER TO GIVE YOU SOPHISTICATED FINANCIAL ADVICE. THEY CAN TELL YOU WHAT THE CURRENT INTEREST RATE IS ON TERM DEPOSITS OR SOMETHING LIKE THAT, BUT IF THE DISCUSSION GOES BEYOND THAT I THINK THEY MUST ADVISE YOU TO MAKE AN APPOINTMENT TO TALK TO THEIR QUALIFIED FINANCIAL PLANNER WHO IS A MEMBER OF THE FPA AND HAS THE APPROPRIATE CHARTERED QUALIFICATIONS OR SOMETHING.

CHAIRMAN—But if the discussion does not go beyond that point, do you think the legislation should be drafted so they are not caught up?

Mr Rofe—So that they are not caught, yes. Again, I think it overlaps a bit with this incidental advice exemption too.

CHAIRMAN—In the early part of your remarks you raised the issue of financial advisers being salesmen. Do you think moving that whole industry sector to a fee-for-service only basis would solve that problem? What do you see as the answer to that issue?

Mr Rofe—I think probably that would be a useful way to go. I remember that in the previous discussion paper implementing CLERP 6 there was a reference in paragraph 2.6 to remuneration and reference to the restrictions placed on the remuneration of registered insurance brokers in that they were being prohibited from receiving remuneration based on the amount of business placed with an insurer, and so forth. I think commissions, both up-front commissions and trailing commissions, even if they are disclosed, must have a tendency to detract from independence, and even worse are soft dollar commissions, where you get a holiday in Hawaii or something like that.

IT MAY BE POSSIBLE TO DRAW A DISTINCTION BETWEEN GIVING ADVICE ON THE ONE HAND VERSUS EXECUTING TRANSACTIONS ON THE OTHER. FOR EXAMPLE, IF A STOCKBROKER CHARGES A COMMISSION BASED ON THE SIZE OF THE TRANSACTION, I DO NOT THINK THERE IS A PROBLEM THERE, BUT THERE AGAIN I THINK YOU CAN DRAW A DISTINCTION BETWEEN ONE EXTREME WHERE YOU HAVE GOT THE EXECUTION ONLY BROKER, SOMEWHERE FURTHER ALONG YOU HAVE GOT THE BROKER WHO WILL GIVE YOU INFORMATION ABOUT A PARTICULAR COMPANY AND ITS FINANCIAL PROSPECTS AND SO FORTH, BUT I THINK THAT IS DIFFERENT FROM GIVING SOMEONE ADVICE AS TO WHAT THEIR INVESTMENT POLICY SHOULD BE. PERHAPS YOU MIGHT DISTINGUISH IT FROM PROVIDING INFORMATION ON THE ONE HAND ABOUT PARTICULAR PRODUCTS VERSUS ASSET ALLOCATION ADVICE ON THE OTHER.

AGAIN, IF STOCKBROKERS SET THEMSELVES UP AS FINANCIAL PLANNERS—AND THERE ARE A NUMBER WHO DO IN FACT SET THEMSELVES UP AS FINANCIAL PLANNERS—THEN I THINK THEY SHOULD HAVE THE QUALIFICATIONS AND BE MEMBERS OF THE APPROPRIATE FINANCIAL PLANNING PROFESSIONAL BODY, QUITE APART FROM WHAT OTHER STOCKBROKING BODY THEY MAY BE A MEMBER OF.

Senator COONEY—I think it has been a theme through the day about professionalism with the financial advisers, when you say the solicitors and the accountants ought to be trained in that. I was wondering what sort of courses there are. You probably heard me before asking about the fact that the solicitors have got back-up with their guarantee funds and things like that. What sort of training would you conceive that solicitors or accountants would undertake?

Mr Rofe—The same sort of training that anyone else who plans to enter the financial planning profession should undertake; except, of course, that they may get exemptions for particular areas that they have covered as part of their qualification as a lawyer or an accountant.

Senator COONEY—May I say that there was a body in earlier which pointed out that a course has been set up by the university about this, so there is one course. No doubt if that were set up the university would undertake the giving of the qualifications.

Mr Rofe—The Securities Institute has a number of courses which are relevant to this area too.

Senator COONEY—Would you just have to do the course or would there be some sort of test of proficiency? It is pretty important, because a lot of people are saying that they do not want to be regulated by government and that they want to be self-regulated. They see a lot of problems with solicitors doing this and that there ought to be a growing profession of financial advisers. You have been at this for a long while yourself, and you might have started it, but it is certainly coming through now in a strong way, it seems to me, that people want to do this. Would it be done through the university?

Mr Rofe—I do not think you need to specify how it would be done. Most professions nowadays, for admission, have what you might call an academic requirement and a practical experience requirement. So far as the academic requirement is concerned, whether it is provided by a university, a college or by a professional body like the SIA I do not think matters. It may be appropriate, and I think this does happen, for a body like ASIC to review the standard of the

academic courses being provided to make sure that they do meet an appropriate level, in just the same way as the accounting bodies review the commerce courses provided by the various universities and accredit them, or otherwise, as a basis for admission to those professional bodies.

Senator COONEY—It is in the migration legislation that you have to be certified to act as a migration agent and there is a body set up to do all that. Were you thinking of something like that? That is set out in the legislation.

Mr Rofe—The body that establishes the qualifications probably could have, say, some representation from ASIC and some representation from recognised professional bodies.

Senator COONEY—Another area where it has happened in Victoria is that the practice of Chinese medicine is regulated. The good thing about it is that, if it is properly done, that gives a focus for the development of ethics and what have you. I would be interested to have your thoughts on all that.

Mr Rofe—As I say, I think an important philosophy behind the legislation should be the development of a competent, independent profession of financial advisers.

Senator COONEY—Otherwise we are going to get a pile of legislation over the years.

Mr Rofe—I do not think you can do it completely by legislation.

CHAIRMAN—I might ask one final question which follows up your reference to commissions. One of the issues that has been raised with us is that commissions in relation to general insurance products should be excluded from disclosure on the basis that it does not create a level playing field because you have other salaried people selling similar products and the back office costs are not taken into account in the salaries of sales people, and so on. Therefore, it might give a purchaser a distorted view of one product against another to actually have the commission disclosed. I wondered what your comment is on that.

Mr Rofe—Yes. It is a problem. I suppose that in the case of products like general insurance you are more concerned with the total cost you pay and the protection you receive. Particularly in so far as there is increasing product standardisation, there may be less need for independent advice. For example, we have these problems about whether people are covered for flood with an insurance policy. It might have been important then to have someone in a position to advise you whether a particular insurance policy was better than another in protecting you. If products like that become more standardised, perhaps there is less need of advice in choosing one product versus another. But I do think that commission disclosure does play a useful role in most cases in giving some sort of guidance as to the potential independence of the advice that you receive.

FOR EXAMPLE, WE HAVE HAD PROBLEMS ABOUT WHETHER PEOPLE ARE COVERED FOR FLOOD UNDER AN INSURANCE POLICY. IT MIGHT HAVE BEEN IMPORTANT THEN TO HAVE SOMEONE IN A POSITION TO ADVISE YOU WHETHER A PARTICULAR INSURANCE POLICY WAS BETTER THAN ANOTHER IN PROTECTING YOU. IF PRODUCTS LIKE THAT BECOME MORE

STANDARDISED, PERHAPS THERE WILL BE LESS NEED FOR ADVICE IN CHOOSING ONE PRODUCT VERSUS ANOTHER. BUT I DO THINK THAT COMMISSION DISCLOSURE DOES PLAY A USEFUL ROLE IN MOST CASES IN GIVING SOME SORT OF GUIDANCE AS TO THE POTENTIAL INDEPENDENCE OF THE ADVICE THAT YOU RECEIVE.

Senator COONEY—I suppose that if the client is not fully informed at least he or she is better informed, so you should show as much as you can what the commission is.

Mr Rofe—I suppose that making information like that available perhaps helps competition in the pricing and costing of these services.

CHAIRMAN—As there are no further questions, thank you again, Mr Rofe, for your appearance before the committee and for answering our questions.

Mr Rofe—Thank you for accommodating my time this afternoon.

CHAIRMAN—That's fine. Your attendance was much appreciated, as always.

Committee adjourned at 3.28 p.m.